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IMPACT OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON RETIREMENT INCOME
AND EMPLOYMENT

OF THE

SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

HELD FEBRUARY 10, 18, AND 25, 1976

Printed for the use of the Select Committee on Aging



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(III)

IMPACT OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

TUESDAY, FEBRUARY 10, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON
RETIREMENT INCOME AND EMPLOYMENT,
SELECT COMMITTEE ON AGING,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2203, Rayburn House Office Building, Hon. Wm. J. Randall (chairman of the full committee and the subcommittee) presiding.

Subcommittee members present: Representatives Randall of Missouri, and Thomas J. Downey of New York.

Mr. RANDALL. The Subcommittee on Retirement Income and Employment will please come to order.

I note the presence of a quorum for investigative purposes, and we are grateful for the attendance of the gentleman from New York, Mr. Downey.

The record will show what you hear and what you read is accurate and true because I know for a fact that my colleague has just come here, in order to give us a quorum, from a very important meeting of the Armed Services Committee. I am a member of that committee and we, too, should be there. We are examining the budget process and it is vitally important that that proceed.

It is also important that this hearing proceed; and, so, this is a demonstration of being two places at the same time.

Back on December 10 this subcommittee had some hearings—I believe it was over in the Cannon Building. We had, then, a witness, who I believe is here this morning, Mr. Batten, who started us on the road of this inquiry.

At that time his testimony indicated that there should be a very thorough review of the Federal Government's responses to the employment problems and needs of older workers. I think he said that it would be most appropriate, and I might add a stronger word and say that that word "appropriate" is a little too mild; it is a much-needed inquiry.

The initial focal point of our inquiry, as well as perhaps this morning, and perhaps the whole review is going to be back on the only law we have on the subject, the only enactment, called ADEA, meaning the Age Discrimination in Employment Act of 1967.

We were here back at the time that was passed in 1967 and supported it, and the question now is: Just what has been accomplished?

Some of our witnesses before at the other hearing, identified age discrimination as a major, if not the major, barrier for older workers,

and I just do not believe that the impact of ADEA has ever been adequately reviewed. And now Gus Hawkins, our friend from California, I think it was yesterday—and the staff will correct me—actually yesterday held a 1-day hearing on the question of mandatory retirement.

We carefully checked. Our staff has checked with the staff of Mr. Hawkins, and we are under a mandate of the House in our funding resolution that there be no duplication, and we have determined there will be no duplication. Mr. Hawkins planned exactly 1 day of hearings. He is not planning any review of ADEA, nor the employment needs of older workers at this time, so there is no duplication, and we are proceeding on that basis.

The Chair believes that the committee can do a real service here by reviewing the impact, the effectiveness, of ADEA, by exploring the issues relating to age discrimination and also with the mandatory and flexible retirement age.

In discussing them with Mr. Sprague a moment ago, there was the expression of affirmative action. We hear that used so many times and in so many different applications, but perhaps we should look at some kind of an affirmative action program for older workers.

Then, we have the problem of counting the older workers, what is an older worker, and particularly the count of the unemployed older worker.

Now, we hope to look at the older worker in CETA and such things as second-career training for older workers, and the particular problems of minority older workers, and the programs specifically and especially designed for older workers.

I am hopeful our findings and recommendations can serve as an aid to the legislative committees for some new and specific action particularly in the area of discrimination.

Our first witness this morning will be Mr. Norman Sprague, who is director of New Life Institute which has a program for providing job counseling and job development, job placement, and retirement preparation. For a number of years Mr. Sprague was with NCOA, which means the National Council on the Aging, and established a quarterly publication known as Industrial Gerontology.

Prior to the enactment of the Age Discrimination in Employment Act, ADEA, back in 1967, Mr. Sprague testified several times in furthering the enactment of that law before House and Senate committees.

Later this morning we will have Mr. Daniel Knowles, who is the director of personnel for Grumman Aerospace Corp. over on Long Island, and he, too, has long been interested in the problems of older workers.

So, on behalf of the committee, gentlemen, we thank you two distinguished gentlemen for giving us your time to appear before us and share your views with us.

The gentleman from New York seeks recognition.

Mr. DOWNEY. Mr. Chairman, I was just wondering, with all due respect to our witnesses, whether I will be able to leave and rejoin the Armed Services Committee, and still allow you to take their testimony.

Mr. RANDALL. The rule is, after the *Reinecke* case and all the other Rules of the House, we have established a quorum for investigative purposes, and we have established a quorum for commencement.

Mr. DOWNEY. Mr. Knowles will understand. I want to make sure the people on Long Island keep working.

Mr. RANDALL. Thank you, Tom.

We do expect momentarily to be joined by Mr. Blouin.

I think we should have for the record here a moment on this before the witness proceeds.

We cannot commence without a minimum of two and, for any action in reporting a measure or any other kind of action, we must have a full quorum.

So, having satisfied the rule and this being only an investigative proceeding, you may go ahead, Mr. Sprague.

STATEMENT OF NORMAN SPRAGUE, DIRECTOR, NEW LIFE INSTITUTE, NEW YORK, ACCOMPANIED BY DANIEL KNOWLES, DIRECTOR OF PERSONNEL, GRUMMAN AEROSPACE, NEW YORK

Mr. SPRAGUE. Thank you, Mr. Randall.

What I would like to do is request that my written statement be included in the record and then I will simply summarize it to get on.

Mr. RANDALL. That is a standard, traditional request. There being no objection, so ordered.

[The prepared statement of Mr. Sprague follows:]

TESTIMONY OF NORMAN SPRAGUE

HEARINGS ON THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

Thank you very much for having me here. I am Norman Sprague, and I work for the Human Resources Center on Long Island, New York. The Center is a non-profit organization dedicated to the education and job training of the physically handicapped and the educable retarded, and to employment for the aging. The President of the Center is Henry Viscardi, Jr., Chairman of the White House Conference on Handicapped Individuals. I am Project Director of the Clearinghouse for Voluntary Employment Agencies for the Aging, a national training and technical assistance project, supported, in part, by the Administration on Aging; Program Director of the Retirement Job Planning Program, supported by a grant from the Florence V. Burden Foundation; and Director of the New Life Institute, a vocational counseling and job-placement program for persons over age 55, funded by the Edna McConnell Clark Foundation.

I was Staff Director of the National Council on the Aging's Committee on Employment and Retirement from 1961 to 1967. I was the first Director of the National Institute of Industrial Gerontology, which was created in 1967, partly in anticipation of the need for information which this Act would generate and which industry would require in order to conform to the Act's provisions. In 1969 we established, and I was the first editor of, the journal Industrial Gerontology, designed as a medium for transmitting research findings and data to employers and practitioners.

I had the honor of testifying before both House and Senate Committees holding hearings on the Age Discrimination in Employment Act in 1967. I testified before the Senate Subcommittee on Labor on March 16th, 1967 and before the House Subcommittee on General Labor on August 2nd, 1967.

At that time I submitted rather lengthy statistical

data and trend analyses in support of the Bill. I am not doing that now because you have had access to excellent background material from other sources.

I have gone over my testimony then and reviewed it in light of our experience with the Age Discrimination in Employment Act since then. First, I would like to say that I think the Labor Department has been doing a conscientious and effective job of administering this legislation, within the constraints of funds available, staff time, and court decisions. This committee should talk to Carin Clauss, Associate Solicitor of the Department of Labor, as she and her associates have been doing such excellent work. However, for workers covered by this Act, those between ages 40 and 65, the employment situation is still not at all good.

Our Clearinghouse was established to serve voluntary employment agencies for the older job-seeker. It was designed to provide a means of communication among agencies, to act as a central resource for information and referral, and to offer technical assistance to improve placement services. In April, 1975, we organized a Training Institute to provide an opportunity for participants to share experiences and techniques. It served as a forum for agency, industry and government representatives to meet and exchange viewpoints as to goals, policies and concerns. Surveys of needs were the basis for program content as well as recommendations for further action. From these surveys we learned that few agencies found state and federal age discrimination in employment laws of much help in their job-placement efforts. While they did not report encountering overtly negative attitudes from employers, they did feel subtle resistance. Most agencies deal with those over age 55. The majority of job placements are part-time. A good number of temporary placements are made, but only a small percentage of full-time ones. Yet, most workers below Social Security age need full-time jobs!

A Harris Poll, conducted in the spring and summer of 1974, showed that 10% of those between ages 55-64 consider themselves in the labor force but unable to find a job. This group comprises a large share of the nation's long-term unemployed. The unemployment rate for those between 45 and 64 is thought

to be approaching 9%. The Senate Special Committee on Aging reports that older workers can expect to be unemployed from 30% to 70% longer than other groups.

I would like to propose that affirmative action provisions with goals and time-tables be added to the Age Discrimination in Employment Act. We now have experience with affirmative action programs for minority members and women, and there are affirmative action provisions for the handicapped under Title V of the Vocational Rehabilitation Act of 1973.

Affirmative Action can supplement and reinforce the other provisions of the Age Discrimination in Employment Act. Affirmative Action provisions with goals and time-tables will give the employer clear guidelines as to his responsibilities. It would necessitate employers making age audits of their staffing patterns and would serve as an educational tool. Several companies have already conducted this kind of age analysis. Karl Kunze, retired from the Lockheed-California Company, has done this. Dan Knowles, Director of Personnel at Grumman Aerospace Corporation, who is here with me today, has a great deal of expertise on this subject, which he will share with us.

I would repeat that, when it comes to the employment of the aging, we need help. In the present economy, it is very, very difficult to place older workers in jobs, and progressively difficult as they get to the ages between 55 and Social Security eligibility age. The strengthening of this Act is only one of many things which needs to be done, and I hope your committee will explore the practicability of this proposal.

I would be very happy to submit to the Subcommittee members copies of our materials: the Proceedings of the Training Institute of April, 1975; the National Listing of Voluntary Employment Agencies for the Aging; copies of our quarterly technical assistance Newsletter, (which is distributed to the private and public manpower networks, including the approximately 600 Area Agencies on Aging and the 450 CETA Prime Sponsors); and Retire to Work: A Retirement Job Planning Guide.

Mr. RANDALL. Proceed, sir.

Mr. SPRAGUE. Thank you.

I will skip the introductory material and try to get on to it—the facts of the situation.

In the first place, we have had this act since 1967, and in my opinion the Labor Department has been doing a conscientious and effective job of administering it, within the framework of the funds available, staff time and court decisions.

The employment situation for those covered by this act, those between ages 40 and 65, is still not at all good.

As part of my work, we deal with the voluntary employment agencies around the country which try to find jobs for older people. The majority of these agencies are finding part-time placement for people over 55. A good number of temporary placements are made, but only a small percentage of full-time placements are made; and yet most workers below social security age need full-time jobs.

A Harris poll, conducted in the spring and summer of 1974, showed that 40 percent of those between the ages of 55 and 64 considered themselves in the labor force, but unable to find a job. This group comprises a large share of the Nation's long-term unemployed.

The unemployment rate for those between 45 and 64 is thought to be approaching 9 percent.

The Senate Special Committee on Aging reports that older workers can expect to be unemployed from 30 percent to 70 percent longer than other groups. This is our problem.

There is a lot of long-term unemployment among workers in this age group. What I would like to propose is an affirmative action provision, with goals and timetables, be added to the Age Discrimination in Employment Act.

We now have experience with affirmative action programs for minority members and women, and there are affirmative action provisions for the handicapped under title V of the Vocational Rehabilitation Act of 1973.

Affirmative Action can supplement and reinforce the other provisions of the Age Discrimination in Employment Act. Affirmative action provisions with goals and timetables will give the employer clear guidelines as to his responsibilities. It would necessitate employers making age audits of their staffing patterns and would serve as an educational tool.

Several companies have already conducted this kind of age analysis. Karl Kunze, now retired from Lockheed, has done this. Dan Knowles, director of Personnel at Grumman Aerospace Corp., is here with me today and has a great deal of expertise on this subject, which he will share with us.

I repeat, that when it comes to the employment of the aging, we need help. In the present economy, it is very very difficult to place older workers in jobs, and progressively difficult as they get to the ages between 55 and social security eligibility age.

The strengthening of this act is only one of many things which needs to be done. I hope your committee will explore the practicability of this proposal.

That essentially summarizes my recommendations, Mr. Randall.

Mr. RANDALL. Thank you, Mr. Sprague.

Mr. Murray, would you please join me over here? Mr. Murray is our professional staff member in this area, and I have never had any hesitancy for commending him and his good work; and I repeat now for the record we are fortunate to have a man who has worked in this area in the State of California and is now with us here.

I note first, Mr. Sprague, that you say you are with the Human Resources Center on Long Island.

Mr. SPRAGUE. Yes.

Mr. RANDALL. In other words, you gentlemen are pretty close neighbors out there?

Mr. SPRAGUE. Yes, we are.

Mr. RANDALL. You probably came down together.

Now, who funds the Human Resources Center at the present time?

Mr. SPRAGUE. It is a nonprofit, private organization. Its funds come from contributions and gifts, foundation grants, and Government grants, and contracts.

Mr. RANDALL. I note somewhere along the line you refer to your organization as the New Life Center. Was it Human Resources Center or New Life Center?

Mr. SPRAGUE. New Life Institute.

Mr. RANDALL. Is there any difference between those two organizations? Do you work for both of them?

Mr. SPRAGUE. Well, New Life Institute is a program of the Human Resources Center.

Mr. RANDALL. I see. That is within the Human Resources Center?

Mr. SPRAGUE. Right.

Mr. RANDALL. Thank you.

The words "human resources" sort of throw some of us, and almost invariably is identified with the poverty programs out in the Middle West and the Western States. Sometimes they are just other words for some sort of poverty program, so you clarified that.

Now, we have had as witnesses, Mr. Sprague, some good-intentioned, active and hard-working women in the Washington suburbs who work or act as sort of brokers in finding employment for older persons. As I understand, your thrust or objective is to try, among other things, to do something like that may be on a wider area or a bigger scale. Am I right or wrong on that?

Mr. SPRAGUE. I am also project director of a clearinghouse for voluntary agencies.

Mr. RANDALL. That is what I am talking about.

Address yourself to that a little bit.

Mr. SPRAGUE. That is a project that is funded by the Administration on Aging, and it serves as a clearinghouse for these—

Mr. RANDALL. Would you please go slower? A clearinghouse for what?

Mr. SPRAGUE. For voluntary employment agencies for the aging, and it is funded by the Administration on Aging, and serves as a clearinghouse and a training and technical assistance program for these nonprofit agencies around the country, such as the ones you have just cited in Virginia, and the one in Chevy Chase, Md.; and there is another in Baltimore and one in Delaware, and more around the country.

There are around 70 of them, nationwide.

Mr. RANDALL. That would be interesting. Would you be good enough to provide us that list, if you would? ¹

Mr. SPRAGUE. Yes, sir, I will.

Mr. RANDALL. You say at least Delaware and elsewhere—Delaware and Baltimore, I think you said, and—

Mr. SPRAGUE. Delaware has one. There is one in Baltimore. There is an outstandingly good one in Chevy Chase, Md.; and there is one—

Mr. RANDALL. I think we had the lady from Chevy Chase with us.

Mr. SPRAGUE. Yes, Gladys Sprinkle. Ane one in Alexandria, and one in Arlington. And they exist around the country, but there are only about 70 of them nationwide.

Mr. RANDALL. Would you please give us that list?

Mr. SPRAGUE. I will.

Mr. RANDALL. Now, reflecting back on the testimony, I feel their efforts or accomplishments seem to overcome the almost insurmountable. It is just a constant vigilance to try, first, to find something and then to try to find the means or the transportation or to gather some suitable work that an aging person can do.

In other words, it is just a constant struggle, as we look back, on that testimony.

Mr. SPRAGUE. That is right. That is right.

Mr. RANDALL. And that is what we are talking about here.

Mr. SPRAGUE. That is right. It is extremely difficult for people over 55, trying to place them in jobs—extremely difficult.

Now, we can have great success with getting part-time jobs and temporary jobs, and temporary or part-time jobs are perhaps adequate for a person who is on Social Security and has some other pension income, perhaps. That person can get by with a part-time job, or perhaps that is all he wants or needs. But those below Social Security age, below 65 or 62, they essentially need full-time jobs.

Those people 55 and over, you know, have family responsibilities often, and mortgages, and all the things that the rest of us have.

Mr. RANDALL. Before we move on to some of the specific points of your testimony, I call your attention to the fact that we have come up now in a matter of a week or two—not over a couple or three weeks—with a supplemental appropriations bill, and we intend to—I say “we”, some of the staff of the full committee and hopefully to enlist the membership of the full Committee on Aging, to pinpoint for the first time some deficiencies in specific programs for aging, which will be considered in this supplemental. In order that there be not the slightest bit of secrecy about it, our plan and hope is to secure some additional funding for some of the good things that could be accomplished by the programs covered in this supplemental. And this additional funding is for just \$18 million. We are going to try mighty hard to persuade the committee to add that small, small sum in terms of the total amount. And, failing that, we are going to be on the floor and offer that as an amendment and hopefully can enlist enough of our committee—we have 28, and it only takes 21 to get a rollcall vote. And we believe that when we can present a reasonable case like that, just let the roll be called, and let those who want to vote against such a supplement, let their names be recorded.

Now, that is our plan.

¹ The list is in the committee's files.

I do not know whether we will press it or not, but we are going to pursue that again and again, not simply in the appropriations process of this supplemental, which is a tiny act. We are not going clear off the deep end and bust the budget or anything. We are just going to pick up a few that have been neglected. So that, as a background, is simply to get enough for a rollcall vote.

With that background, my question to you is: CETA was mentioned a couple of times, and you mention title V. I was surprised it was title V of the Rehabilitation Act. Would that have any help or assistance for the aged? Or is that purely for the retarded?

Mr. SPRAGUE. That is just for the handicapped.

Mr. RANDALL. All right.

Now, what phase or what section or breakdown or item of the Administration on Aging or of the Department of Labor, so far as you know—and I think I am bringing up your written testimony and your informal remarks—involves enforcement or surveillance or a careful looking at what is going on under ADEA?

From your purview, is there anything that you see coming up in the AoA or DoL appropriations that affect ADEA? We are not going to bust any budget, but just some places that could get a little bit of help.

Mr. SPRAGUE. Well, on the enforcement of the Age Discrimination in Employment Act, that rests in the Labor Department and there are essentially two parts of the Labor Department that deal with this, the Wage and Hour Bureau of the Division of Labor Standards, which handles the investigations and the basic enforcement; and the Office of Solicitor handles the legal aspects of it as they go into court. Something like that.

Now, I have no idea, you know, of their budget for this. There are a number of staff people. I would guess, without knowing the facts, that they probably do not have enough to really do this job the way it should be done.

Mr. RANDALL. All right. You are saying to us, as far as the Department of Labor, you do not know. You cannot give us that information, and you are not the best witness, in other words.

Mr. SPRAGUE. Not when it comes to the budget and staff.

Mr. RANDALL. What about AoA?

Mr. SPRAGUE. Well, the Administration on Aging does not have anything to do with the enforcement of this act.

Mr. RANDALL. I see. All right.

Now, going back on the other line, I do not know whether it is Miss or Mrs. or Ms. Carin Clauss—

Mr. SPRAGUE. Right.

Mr. RANDALL. She is referred to as "she".

Mr. SPRAGUE. Right.

Mr. RANDALL [continuing]. Has been doing some excellent work.

Now, is she the lady in charge of the—I do not know whether you call it enforcement or not; but, anyhow, she is administering this ADEA in the Department of Labor; is that right?

Mr. SPRAGUE. She handles the law itself, the court cases.

Mr. RANDALL. I see.

Mr. SPRAGUE. She and the solicitor's office in the department.

Mr. RANDALL. You call her the Deputy Associate Solicitor?

Mr. SPRAGUE. Associate Solicitor. And I recommend to this committee that you should talk to her.

Mr. RANDALL. I recommend that we do hear her.

Mr. MURRAY. She will be a witness on the 17th and 18th.

Mr. RANDALL. Fine. Thank you.

Mr. Sprague, on page 3, down a little more toward the bottom, you are talking about 1975 and organizing a training institute.

Mr. SPRAGUE. Right.

Mr. RANDALL. It will serve as a forum for agency, industry and government representatives to meet and exchange viewpoints as to goals, policies and concerns.

Mr. SPRAGUE. Right.

Mr. RANDALL. Incidentally, if you have any minutes of that or any kind of record, we would like to have a kind of rundown on that, if it is available.

Mr. SPRAGUE. I have a whole printing of the proceedings, which I will submit to you.¹

Mr. RANDALL. That would be good spring training for some of our staff to look over.

Now, here, what you finally say, as you get on down, and you said, "From these surveys we learned that few agencies found State and Federal age discrimination in employment laws of much help in their job-placement efforts."

Of course, that will be one of the items that will be contained in your summary of the proceedings that you will give us. This is significant and I have noted out in the margin to ask you: While they did not report encountering overtly negative attitudes of employers, they did feel subtle resistance. And then you go on about the part-time. Were there any specifics of this subtle resistance, and how subtle was it and who were they?

Mr. SPRAGUE. The agencies, in their job development and placement efforts, when they are out trying to persuade employers to hire older workers, find the employers smile and say, "Yes, that's nice." All that. And, "We will do our best." They do not say anything negative about people in these age brackets; but they simply do not hire many of them.

That is what we mean by that. They do not go around saying old people cannot do the work. They just do not hire them.

Mr. RANDALL. Well, we will get into this deeper later on. I guess ~~what we are really talking about here~~, and I do not want to jump to this conclusion by any means, is changing the attitudes and practices of employers that are illegal and harmful to older workers.

You are an expert in this field and you just used some words there that I suspect are about as good a description as any: the employer smiles, thanks you, and says, "We will do our best."

What is it going to take to get him to do more than that? Is it going to take, to come back to the old tired, wornout, overworked and overused—which is listed with some of our budgetary and fiscal difficulties—some sort of subsidy? Are we going to be able to put any real teeth into this law, going to be able to go along the lines of getting away from this expression of "affirmative action," which means so many things to so many different people?

¹ Material retained in committee files.

Maybe we ought to turn that expression around and put in some kind of a different terminology and call it some kind of a plan—maybe the Sprague plan. Use any name that we want, like the Kansas City plan or the Philadelphia plan, and say employers are going to have to do something substantial and not just continue to smile and say, "We will do our best."

You are going to have to show that a certain percentage or a certain number of these able and qualified older workers are going to be hired. It is sort of like the blacks. With the blacks, the employer always said, "Wait a minute, we cannot hire those people. They just are not qualified."

As I understand, those plans said: You have got to go out and get somebody who is qualified. You just cannot say, we do not know where they are.

And so, please address yourself to this issue. Maybe I am jumping way ahead of the parade, but I think we ought to cut away some of this stuff and get to the brass tacks.

Mr. SPRAGUE. We quite agree with you.

I think that one of the things that we have to do is make the language of the law and its enforcement provisions clearer.

An example of that was the *Greyhound* case which—

Mr. RANDALL. We lost that case, did we not?

Mr. SPRAGUE. Yes. The Government lost that case, but they won at the first level. I do not know what that is in the Federal judicial system, but they won in Chicago and it went to appeal in Denver, and they lost on appeal.

In that case, Greyhound will not hire drivers over age 35 and the Government lost in that case.

Now, it seems ridiculous that Greyhound—they have drivers much older than that—just will not hire such a person.

Mr. RANDALL. I have seen an awful lot older than that. You have, too.

Mr. SPRAGUE. We all have. They just do not hire over 35.

Suppose a person has been driving a bus for Trailways, and he is 36. He wants to change to Greyhound. They will not hire him.

I do not know what you can do to strengthen the language in the law, but something has to be done to make the intent of Congress clear that this kind of thing is not to be an exception or a bona fide occupational qualification.

Now, in addition to that, I think we have to get into having companies make age analyses of their work force, if they have not hired anybody, you know, over 40 in 20 years, they are unquestionably doing something wrong.

We have the questions of hiring, retention, and promotion within organizations. These are the kinds of things that we are talking about.

Mr. RANDALL. Yes. We are back now to the first point: Companies must make age analyses of the work force.

Now, that has never been done.

Mr. SPRAGUE. No. It is not required.

Mr. RANDALL. I mean this has not been done voluntarily.

Mr. SPRAGUE. Not often.

Mr. RANDALL. And I can understand why.

Would you recommend that such analyses be made a part of the substantive law?

Mr. SPRAGUE. Yes, absolutely.

Mr. RANDALL. If we have not accomplished anything else in this hearing, we have that nailed down.

All we have to do now is get Education and Labor to move. I do not guess anybody could say that this analysis would be a trade secret of any kind or revealing any valuable formula, or something of that kind. It should be a requirement that that be published.

Mr. SPRAGUE. I do not know it if is—

Mr. RANDALL. Put that in there, as we have already crossed that bridge.

Mr. SPRAGUE. Yes, we have.

Mr. RANDALL. You know, you can hardly do anything that is a secret any more. Here in the city of Washington, at one time it was said there never had been a secret and there never will be; but I am talking about out in the country. This should be published and made available.

There appears to be much about this Harris Poll. This was back in 1974, and what happened to Mr. Harris? He was going to appear before this committee. Mr. Harris was supposed to come and give us the benefit of all of those polls on the aging. But it did not fit into his schedule to appear. Maybe we can accommodate ourselves to his schedule. We would like to look over all of the polls on it.

Mr. Sprague, you state in your testimony that Mr. Harris said the unemployment—not the unemployment in the sense of some displacement or something as a result of a cutback or a RIF [Reduction In Force] of some kind, he said there is 10 percent of those between 55 and 64 that regard themselves as in the labor force and cannot find a job.

Do you know any more about what he said? Is that all he said, or what was it?

Did you have his questions? I think we ought to have Mr. Harris in and see if he cannot tell us how he arrived at that.

Mr. SPRAGUE. I do not have any more information on that. I just have the findings.

Mr. RANDALL. All right. Now we get down to our affirmative action on page 4.

Spell out a little better, if you can, when you say that "Affirmative action provisions with goals and timetables" should be added to ADEA [Age Discrimination in Employment Act]. Tell us what you mean.

Mr. SPRAGUE. Well, the law would read something like: The responsibility of each employer is to take affirmative action on this subject of employment of workers between 40 and 65, that they make these work force analyses of their own situation and establish goals as to what they are going to do.

Mr. RANDALL. All right. You are going a little fast again, Mr. Sprague.

The first point is to—

Mr. SPRAGUE. All right.

Mr. RANDALL [continuing]. Make an analysis. That is what you were talking about a minute ago here.

Mr. SPRAGUE. Right.

Mr. RANDALL. Make an analysis, No. 1.

Mr. SPRAGUE. Then they would develop a plan as to how they were going to correct any——

Mr. RANDALL. Could we back up just one minute? Make an analysis of all of their farflung operations, in however many plants, wherever it may be, if it is a one-plant business or one operation or whether it is a service or manufacturing, whatever it is, make that analysis.

Mr. SPRAGUE. Right.

Mr. RANDALL. Of its own operations.

Go ahead, sir.

Mr. SPRAGUE. Then they would establish goals to remedy any inequities that their analysis reveals.

Mr. RANDALL. Remedy inadequacies.

Mr. SPRAGUE. Right.

Mr. RANDALL. That the analysis reveals.

Mr. SPRAGUE. Right.

Mr. RANDALL. OK. Proceed.

What is the third step?

Mr. SPRAGUE. Have a timetable. There would have to be a timetable over what period of time they plan to accomplish, A, B, and C of their plan.

Mr. RANDALL. You are talking sense now. This is what we are going to have to do. We are getting down to the lowest common denominator. We are getting down to what we called you in for.

Go ahead. I am sorry.

Mr. SPRAGUE. I think that it might be a good idea at this point if you talk to Dan Knowles and listen to Dan Knowles.

Mr. RANDALL. We are going to give Mr. Knowles uninterrupted attention in just a minute, but we want to talk to you first.

We would like to call on Mr. Karl Kunze, since he was with Lockheed in California. It may cost us a little money to bring him here.

Mr. MURRAY. We tried, but he was not able to come.

Mr. RANDALL. Let us see if we cannot try again.

We want to get the Lockheed experience, and we will hear from Mr. Knowles in just a moment.

Let us go back to this very important proposal which you made here. You are not a lawyer?

Mr. SPRAGUE. No.

Mr. RANDALL. And it has been along about 18 years since we practiced law, too; but is there not some way that we can amend this age discrimination, and not to use the words of the street people, that "we got tired of listening", and to make it meaningful; and then the other word they used was "viable" and all these things.

Let us put it in simple language and make it work, do something to see that something happens here in terms of this proposal that you are talking about here.

Do you have any facility or any available expertise in your shop anywhere that could just come up with a sort of a layman's language amendment or something that you think might be added to the ADEA act? We will polish it up to make this thing work, along with the affirmative action plan.

You know what happens in the minds of an employer today in terms of the Civil Rights Act. They are literally scared to death. They say, "Wait a minute, we do not have a place for a black, but we will find a place for a black."

Is there some way we can do something like that on some of these good, able-bodied folks in this bracket that would make something happen here, make it a part of the law?

Mr. SPRAGUE. Yes. We can come up with—

Mr. RANDALL. Is that not what we are talking about?

If I am not making an analysis of the problem, OK, but that seems to me what you are talking about here.

Mr. SPRAGUE. That is right. That is what we are talking about.

Mr. RANDALL. I mean, I have had dozens of employers in our 16 counties say, "Listen, we are not so enthusiastic about hiring these minority people. The law says we have got to do it, and we are going to do it"; but the law does not say this about the aging, does it?

Mr. SPRAGUE. No; it does not.

It is lacking in the law.

Mr. RANDALL. If you can tell me anything more important to do than that, please do so.

Mr. SPRAGUE. I think it is so very important that we do this; very important. I think if we strengthen this law—Age Discrimination in Employment Act—along the lines that I suggested, I think we have made giant strides.¹

Mr. RANDALL. Mr. Sprague, I guess it is a question of semantics or maybe pleasing sounds and phrases and words. Please let me digress for a moment. We headed a subcommittee that had to go into the Pacific in the first 2 weeks of January, and we were in Jakarta. Now that government employed some words that were just unbelievable. You might say their main foreign policy and domestic policy and everything else was involved around two words, known as the "national resiliency".

There were three or four cases. I am not sure what national resilience meant, except having plenty to eat and therefore you would not have any reason to look at any communistic proposal; but you can put some words into some pretty nice sounds here, and I think you have done it.

When you used the three words right there in your last line, "Retire to Work", not retired, but "Retire to Work," and I hope that you give us a copy of what you call the Retirement Job Planning Guide.

Mr. SPRAGUE. Fine. I will do that.

Mr. RANDALL. I do not know what the content is, but I like the sound of that title, "Retire to Work."

Thank you very much.

Does the staff have any questions?

Mr. MURRAY. I would just as soon wait, Mr. Chairman, until both have testified.

¹ The language of the proposed amendment is as follows:
Sec. 4(g)

Each employer and labor union covered by this act shall make an age analysis of its work force to determine if its hiring, promotion, retention and retirement policies conform to the age distribution structures in its labor market area. Each employer and labor union covered by this act shall submit an annual report as to its findings, its goals and its timetables for action to correct imbalances.

This report shall be due each year on the anniversary of the date of passage of this act.

Mr. RANDALL. Now, Mr. Knowles, do you have a prepared statement of any kind?

Mr. KNOWLES. I have written summary of my comments and would like to talk a little bit off the cuff.

Mr. RANDALL. That is fine. Just go slow for us to make some notes as you go along.

[The written summary by Mr. Knowles follows:]

SUMMARY OF TESTIMONY OF DANIEL E. KNOWLES
FEBRUARY 10, 1976
SELECT COMMITTEE ON AGING OF U. S. HOUSE OF REPRESENTATIVES

Discrimination on the basis of age is insidious since it is perpetuated by other older and middle age workers, who are generally in the management levels, who do the discriminating. Basically, the Department of Labor has not provided demographic analyses to industry pertaining to the availability of middle age and older workers by broad job categories, such as officials and managers, or professionals, or more specific jobs such as engineers or accountants. Consequently, it is impossible for industry to measure its company workforce to determine if it is representative of the area workforce. Companies do not know factually whether they are discriminating or not. In addition, the Department of Labor should assemble, collect and disseminate not only the demographic analysis of the workforce by age, but also information exploding the old wives' tales and myths about middle age and older workers, similar to publications exploding myths about women in the workforce. An inexpensive pamphlet containing this information should be prepared and distributed by the Department of Labor, explaining that it is good business to employ the middle age and older worker.

Industry deserves the opportunity, via an awareness program, to self-audit itself by voluntarily taking affirmative action before making it mandatory to submit reports to the various government auditing agencies. If an affirmative action provision is added to the Age Discrimination Employment Act, it should not be a paperwork oriented program, but rather an action oriented program. The Department of Labor regulations known as Order 4 and Order 14, covering minorities and women, has deteriorated into an horrendous paperwork problem because of over-analysis of criteria which has negated, to a large extent, the very purpose of an affirmative action program.

In summary changes to the Age Discrimination Employment Act should encompass the following:

1. Require the Department of Labor to do a demographic analysis of middle age and older workers by SMSA [Standard Metropolitan Statistical Areas] by broad categories of jobs - Officials & Managers, Professionals etc and by specific occupation - Engineers Accountants etc.
2. Provide free to industry, an inexpensive booklet containing information on how to do a workforce analysis within a company, utilizing the demographic data information exploding the myths about middle age and older workers, and, finally, information demonstrating why it is good business to hire the middle age and older worker in conformity with the provisions of the Age Discrimination Employment Act.
3. Failure on the part of industry after a reasonable period of time to voluntarily self-audit and monitor its obligations to ensure fair and equal treatment to the middle age and older worker would result in further changes to the law requiring the submission of a more formal affirmative action program.

Mr. KNOWLES. We now have a number of different affirmative action programs for minorities, for women, and, more recently, for the handicapped, and even more recently for veterans; and I would like to see us do something for middle-aged and older workers.

I think they deserve to get a fair shake, also. I think everybody is crying for the same thing—a fair shake.

Of all the types of discrimination that I have experienced, or have seen, I think discrimination against the middle-aged and older worker is probably the most insidious. It is other middle-aged and older workers who are perpetrating the discrimination, not younger people. Most often, young people are not in a position where they can discriminate.

Mr. RANDALL. If I may interrupt you. I think I grasp that concept. It might save us going back, and I will not interrupt you any more.

You passed by pretty quickly there. When you say age discrimination is the most insidious of all discrimination. You mean it is done by those who are in executive capacity, those who are up in charge, and who are usually older. The young fellow way down the line in management has not had a chance to practice it. Is that it?

Mr. KNOWLES. Yes.

Mr. RANDALL. I will not interrupt you, but I like the idea. Thank you, sir.

Mr. KNOWLES. Yes; that is the point. It is like an animal that devours its own, and most of the discrimination that I have seen in this area is not so much overt as covert. People are discriminating and they do not recognize it.

I am ashamed to say some of the biggest offenders are other personnel people who are discriminating, day-in and day-out, without even being aware that they are discriminating.

I think we have a need to take a number of steps, each one with increasingly more difficult aspects to it. I do not think the Government, and particularly the Department of Labor, has done the job in trying to make industry aware of the problem, specifically in the area of providing data, doing demographic analysis of the availability of middle-aged and older workers.

If you were to ask the typical company or organization, "Are you discriminating against the middle-aged and older worker?" they are obviously going to stand up and in a very vitriolic way say, "No." They do not have the foggiest idea whether or not they are discriminating against middle-aged and older workers. Because of the paucity of information that is being provided by the Department of Labor, they have nothing to judge by.

Now, there may be someone in the Department of Labor who is hidden away in some little office, some number-nummy—

Mr. RANDALL. May I interrupt? We call that the faceless-nameless bureaucrat hidden away in some corner, facing the wall, two corners, and does not even have a window to look out of or anything.

Go ahead.

Mr. KNOWLES. I am not familiar with your subculture down here.

Mr. RANDALL. We may have to go back to someone that we have here in town—a gentleman who is an expert on bureaucrats, and he has the title of "bureaucrat," and I think it is: "When in doubt, e." I do not know, but maybe you are referring to the same kind

Mr. KNOWLES. I do not know, but I do not intend to mumble, myself, Mr. Randall.

Mr. RANDALL. Thank you.

Mr. KNOWLES. There is a need somewhere along the line for the Department of Labor to start doing something about publishing information so that companies can do an analysis and understand whether or not they are discriminating.

In fact, as far as I am concerned, there has been an awful failure on the part of the Department of Labor in providing this data in the area of affirmative action for minorities and women also, much less the handicapped and veterans.

Now, it seems to me the information is there via the census report, and we are finding that outside computer companies are doing the analysis, and Government agencies are paying outside companies to analyze information that already belongs to the Government.

It would appear, if one person alone, somewhere in the Department of Labor, could be assigned to pull together a booklet that could be given away free to organizations and companies, that would help companies understand the problem of the middle-aged and older worker; and, secondly, providing data by which they can make an analysis of their own work force.

I have not done an exhaustive research of what is available. Nevertheless, the only information I have ever seen of any meaning coming out of the Department of Labor has been one figure that came out of Department of Labor bulletin 17-21.

Mr. RANDALL. 17—would you give us the date?

Mr. KNOWLES. Chart A, page 31, dated 1971. It is a very simple statistic. It says, in the national work force, that 35 percent of the work force is above age 44.

Now, with that figure alone, you have the ability to at least analyze your work force within your organization in a reasonably rudimentary way.

I have prepared this booklet, which I would like to introduce, entitled "Workforce Analysis by Age"; and, if I could, I would just like to walk you through this booklet so you might understand it.

Mr. RANDALL. Without objection, the booklet will be made a part of the record at this point.

[The booklet follows:]

WORKFORCE ANALYSIS

BY AGE

	<u>1973</u>	<u>1975</u>	
OFFICIALS & MANAGERS	54%	61%	+ 7%
PROFESSIONALS	44%	51%	+ 7%
TECHNICIANS	49%	52%	+ 3%
OFFICE & CLERICAL	55%	51%	-4%
CRAFTSMEN (SKILLED)	55%	51%	-4%
OPERATIVES (SEMI-SKILLED)	60%	51%	-9%
LABORERS (UNSKILLED)	55%	37%	-18%
SERVICE WORKERS	71%	65%	-6%
<u>TOTAL</u>	<u>52.5%</u>	<u>52%</u>	<u>- .5%</u>

*NATIONAL WORKFORCE 35% ABOVE 44 YEARS OF AGE
DEPT. OF LABOR BULLETIN 1721 CHART A-2 PAGE 31 1971

Age Distribution by EEO - 1 Categories*

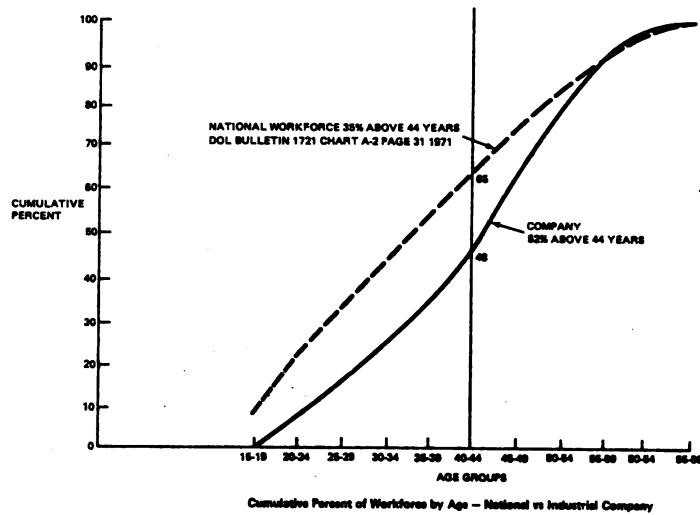
1

<u>CATEGORY</u>	<u>TOTAL AT XYZ CO.</u>	<u>TOTAL AGE 45 OR MORE</u>	<u>% OF TOTAL</u>	<u>EXPECTED NO. IF NATIONAL AVG (35%)*</u>
OFFICIALS & MANAGERS	2597	2133	82	740
PROFESSIONALS	7152	4831	68	2425
OFFICE & CLERICAL	2500	1501	60	955
TECHNICIANS	2614	1687	65	932
CRAFTSMAN	5187	3074	59	1787
OPERATIVES	3202	1868	58	990
LABORERS	149	67	45	57
SERVICE WORKERS	626	473	76	224
<u>-----</u>	<u>24,027</u>	<u>15,634</u>	<u>65%</u>	<u>8,110</u>

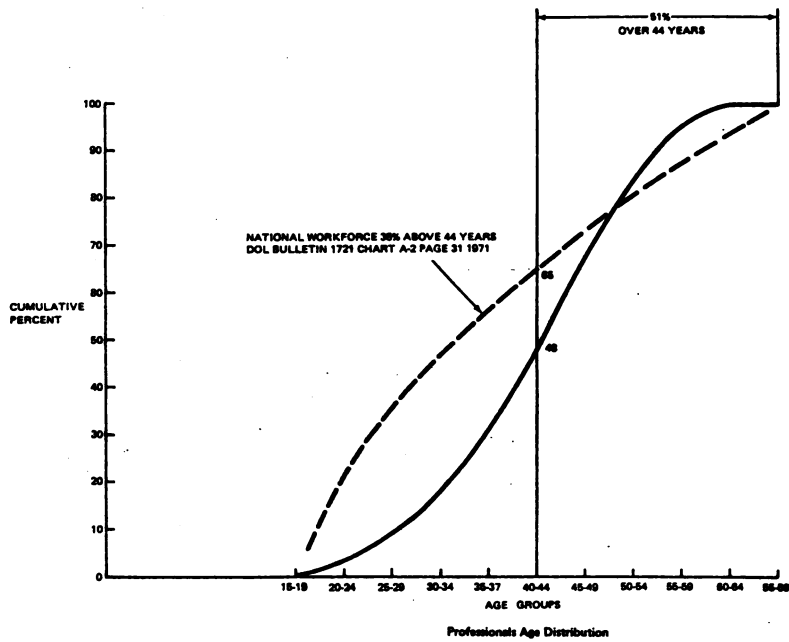
*NATIONAL WORKFORCE 35% ABOVE 44 YEARS OF AGE
DEPT OF LABOR BULLETIN 1721 CHART A-2 PAGE 31 1971

Percentage of Your Employees 45 or Older by EEO - 1 Job Category

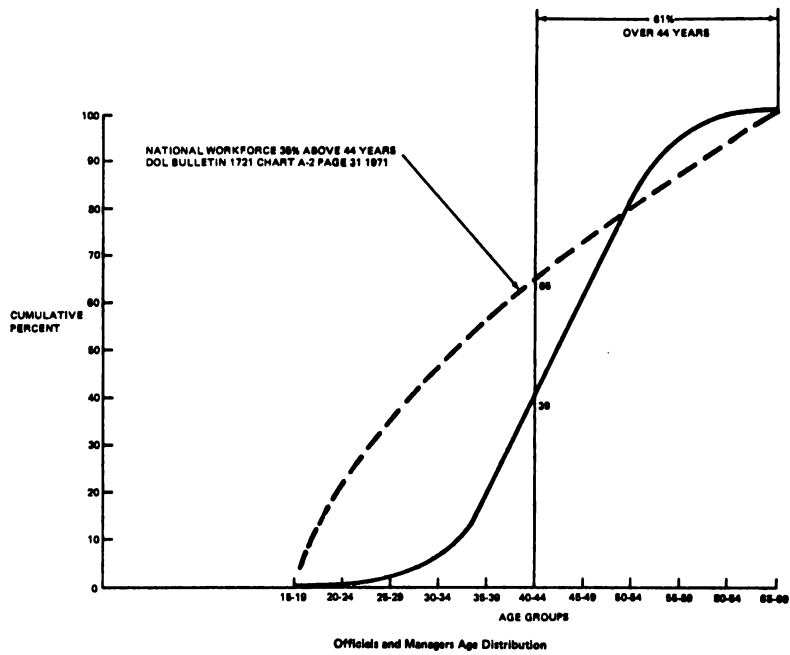
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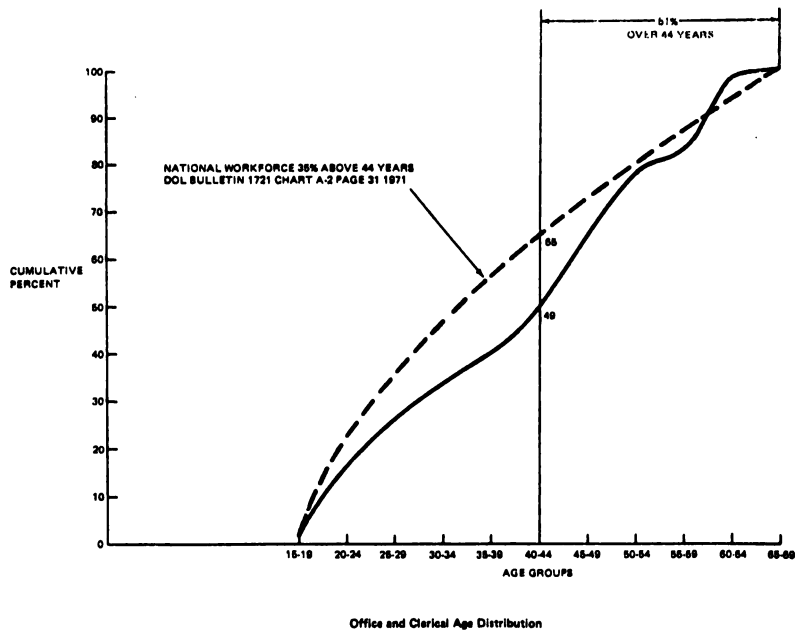
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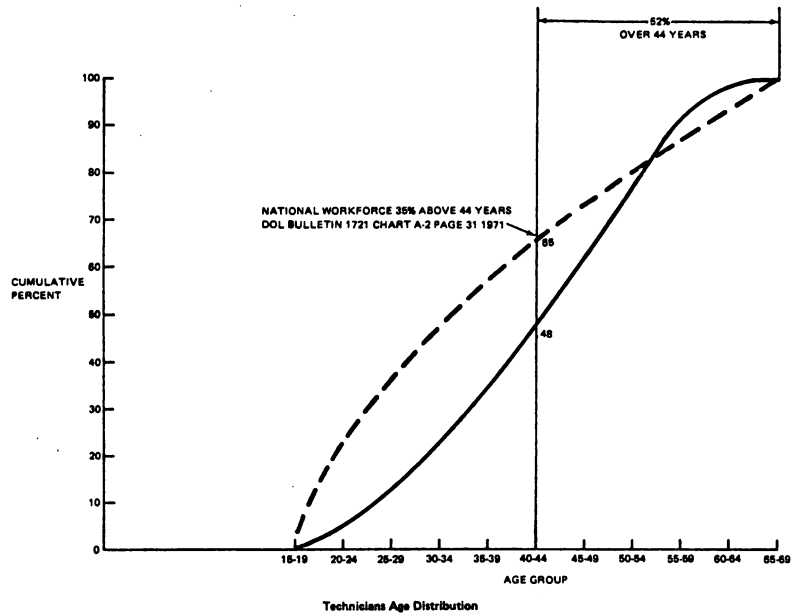
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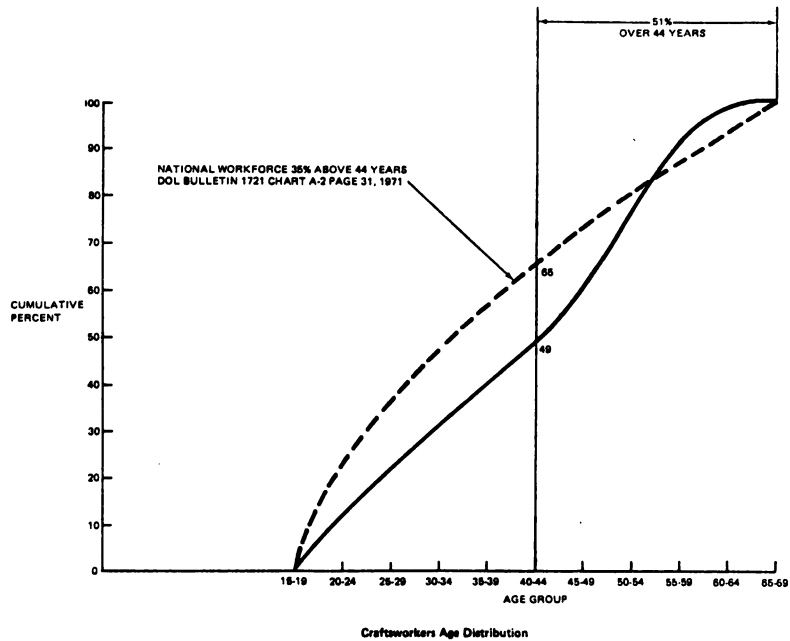
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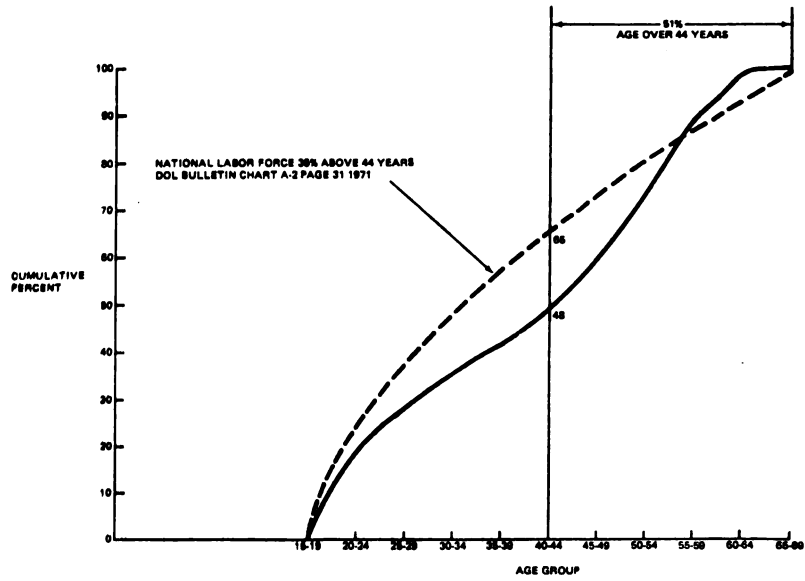
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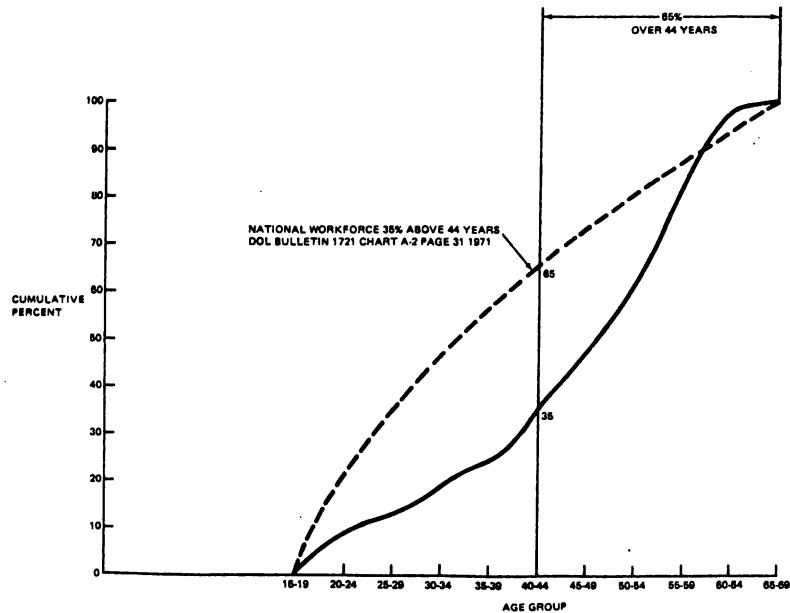


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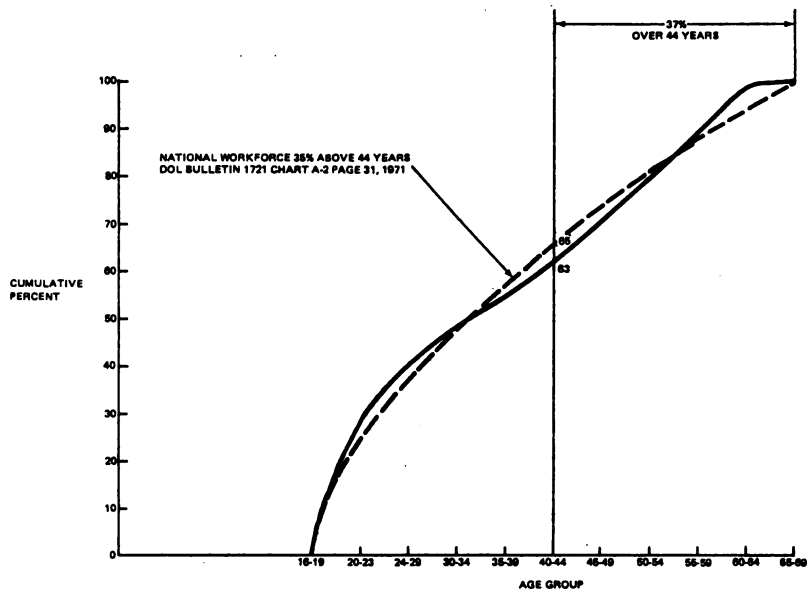
Operatives Age Distribution

9



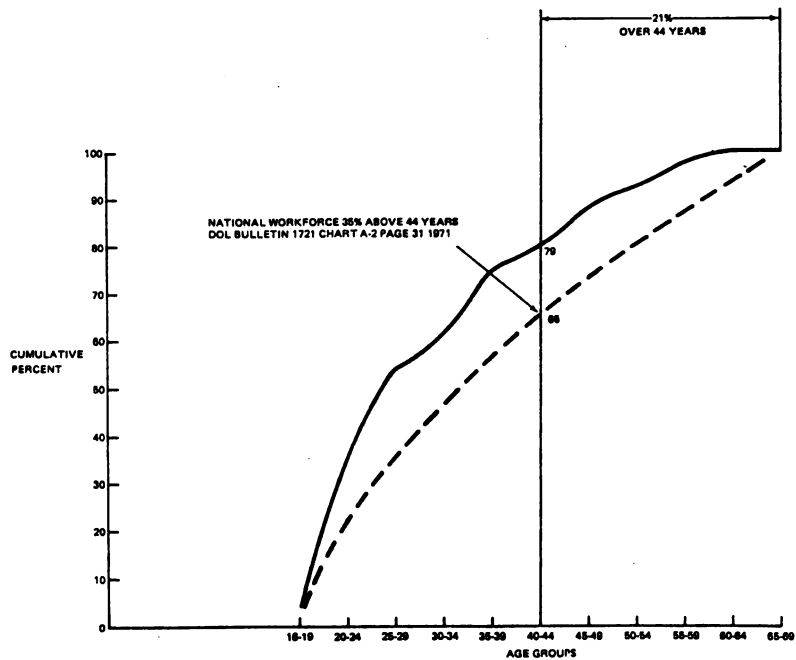
Service Workers Age Distribution

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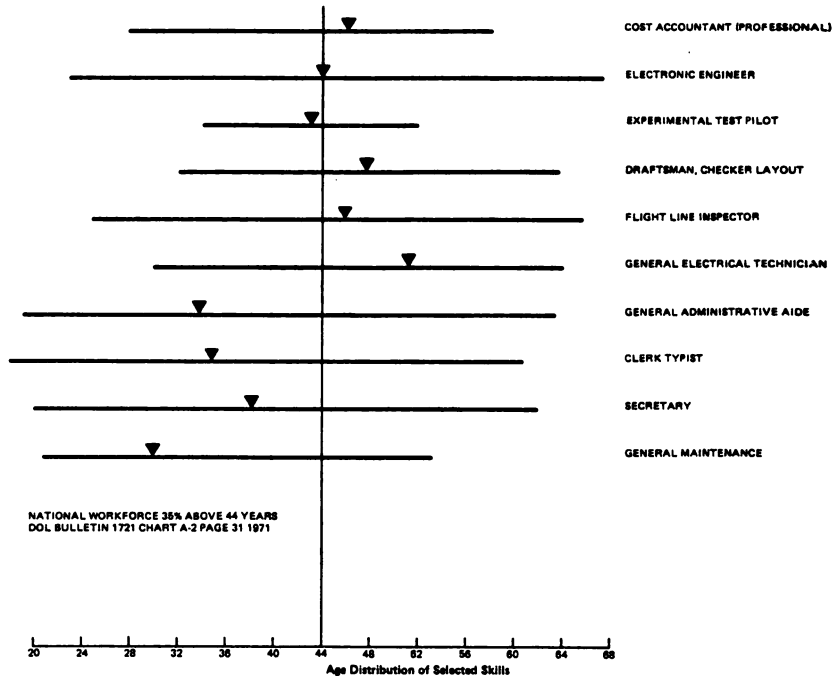
Laborers Age Distribution

11



1974-1975 Company Hires by Age

12



13

- WORKFORCE COMPOSITION
 - UTILIZATION ANALYSIS
- HIRING
 - POLICIES & PRACTICES
 - STATISTICAL ANALYSIS & COMPARISON
 - JOB RE-DESIGN
- TERMINATIONS
 - ANALYSIS OF LAYOFFS, DISCHARGES, ETC.
- TRAINING PROGRAMS
 - AFTER HOURS COURSES
 - RE-TRAINING PROGRAMS
 - SUPERVISORY & PROFESSIONAL DEVELOPMENT
- PROMOTIONS & TRANSFERS
 - UPGRADINGS
 - PROMOTION TO SUPVR. POSITIONS
 - PROMOTION WITHIN SUPVR. POSITIONS
 - TRANSFER TO INCREASED RESPONSIBILITIES
- RECREATIONAL & SOCIAL PROGRAMS
- RETIREMENT POLICIES

Guidelines for Analysis of Older Workers in Company Workforce

14

Mr. KNOWLES. What is basically done is taking a look at broad categories of jobs within a company. They happened to correspond to what is known as the EEO-1 job category, which is used as a partial analysis within the affirmative action program for minorities and women, and basically it breaks the jobs out by official and managers, professionals, technicians, and whatnot.

Now, you have got to have a base from which to work. That is page 1. I give as an example, on page 1 of the analysis that was done in 1973, and then an analysis that was done in 1975; and now you can measure the change that has occurred in those categories in terms of age when you are matching against that one available figure; namely, 35 percent of the work force being above age 44.

Page 2 breaks out within a company what it might look like, by finding out how many people are in each of those categories and then analyzing to see how many are above age 44; and then what percent of the work force is in the official and manager category, professional category, and so on; and the final column indicates what the expected number would be if you went by the national average.

The rest of the pages are just basic charts that break out those categories, graphs, to make a comparison between the national work force and a particular company.

The next to last page is another approach by breaking it out into specific occupations, by doing a sampling. This is just another approach of taking specific occupations and analyzing those occupations.

And the final page, page 14, lists various items that you would look into in terms of analyzing within a company whether or not the middle-aged and older worker is getting a fair shake.

The work force utilization analysis, which I have shown on the preceding pages, looks into hiring, terminations, training programs, promotions, transfers, recreational and social programs, and retirement policies.

This is not meant to be an all-inclusive analysis within a company, but I have tried to use what I would call the KISS principle.

Mr. RANDALL. The what?

Mr. KNOWLES. The KISS principle, which stands for Keep It Simple, Stupid.

Interestingly, I have just one other point that I would like to make. Our company has, like many companies, gone through a significant reduction since 1969. We have lost thousands of people within the company, some through reduction in force and others through voluntary quitting and retirements and deaths and whatnot.

Our reductions in force within our company are handled on the basis of performance. We rank people in terms of overall value and start at the bottom of the list and we lay people off. What evidence we have is that following several thousand people having been reduced from the company through involuntary layoffs, we have found that our average age has increased significantly.

So I can only conclude from that that there is a relationship between performance and age in favor of the middle-aged and older worker, which I think is a very logical assumption to begin with.

All things being equal, more experienced people are older people, and more experienced people are usually able to outperform people who are younger and do not have the same amount of experience.

So I think there are a number of old-wives' tales that must be exploded and explained to all of us in terms of misconception about the middle-aged and older worker.

If affirmative action plans are going to be required for the middle-aged and older worker, I pray that your act and your legislation does not turn the thing into a paperwork program but, rather, a results-and-action-oriented program, and not like the affirmative action program for minorities and women that has gotten completely out of hand in terms of the paperwork.

We have reached the point, I believe, where we have two things in the concept of affirmative action—one is the affirmative action plan which, today, goes into thousands of pages as part of a plan; and the other is affirmative action programs, and they are really two very distinct things. The Government has now reached the point in paperwork, sir, where the paperwork has gotten completely out of hand.

The Rehabilitation Act of 1973 was supposed to be an action-oriented program, not a paperwork program; and I see it turning in the latter direction.

I hope when you get into the area of legislation on age discrimination that you do not turn it into a paperwork program, but make it into an action-oriented program.

Now, there are two ways that you are going to be able to accomplish this in industry. One is through an awareness program that it makes good sense, and it is good business, to hire the middle-aged and older worker.

If that does not work, then you are going to need someone like Carin Clauss and a whole troop of others like her to require employers to be fair with older workers. I look on Carin Clauss as sort of the reincarnation of Teddy Roosevelt at this point.

She is speaking softly but she does carry a big stick.

I would like to see Carin Clauss put out of business because companies will take affirmative action and do something to assist the middle-aged and older worker, because it makes good sense to do it.

Mr. RANDALL. Thank you, sir.

Mr. KNOWLES. That is about it.

Mr. RANDALL. I was trying to catch up here. That is why we like to try to at least have the folks prepare and give us prepared statements, so we can be better prepared to go back and cross-examine you; but I think I have it down—the main ideas. And we will do our best.

The first time as I said I was not going to interrupt, I almost had to, but I find from my staff man here that your charts do reflect not totally Grumman's experience, but this is mainly Grumman's experience, a lot of it.

Mr. KNOWLES. I was not trying to highlight our company.

Mr. RANDALL. You are very modest, and to be commended.

I know that Grumman makes the F-14 Tomcats. We have a little experience on armed services for about 17 years, and we think it is a good plane, exceeded only by McDonnell-Douglas' products out of St. Louis.

Mr. KNOWLES. Since you come from Missouri, I will excuse that. Back on Long Island where we manufacture the F-14, we have a sticker that says, "Anytime Baby." This is in reference to the F-14 versus the F-15.

Mr. RANDALL. The Tomcat is quite a performer. By the way, there is a picture in the Washington Post of a Tomcat landing on a carrier.

What else are you making out there besides Tomcats?

Is your line still open?

Mr. KNOWLES. E2C's, EAGB's, AGA's, Gulfstreams and small aircraft.

Mr. RANDALL. What about the 16 and the 18? That is what you fellows have got to watch.

All right, let us get back on the track here.

Well, I visited your plants several years ago when I was on the Space Committee. You did some space work out there, your great corporation, and a great part of the so-called military industrial complex of this country. If you are going to do the things you say you are in this area of age, and I do not have any reason to doubt that at all, I suspect you are doing some things which some of the other contractors are not doing. We are going to try to find out what they are doing.

Well, you start out by saying the same thing should be done—affirmative action plan for the middle-aged and older workers that is being done for minorities, women, and veterans, and you characterize your whole objective as giving them a fair shake.

Mr. KNOWLES. Yes, sir.

Mr. RANDALL. We covered the point about the old, who are doing this to the older workers, the top-drawer executives are the ones. I do not know what it is. Maybe you know.

Maybe their eyes are so much on the present that they think they can just hire a few of this minority; but the thing that impresses me is the comparison with "an animal who devours its own."

Mr. KNOWLES. That is right.

Mr. RANDALL. I want to be sure I have right the steps you propose. I think that you said the very first thing was a demographic analysis, and then you went on from that. Now, would this demographic analysis be made by someone in the Department of Labor or where?

Mr. KNOWLES. Yes. The information is there, but just not being utilized.

Mr. RANDALL. Does anybody have any kind of idea that what is going to cost?

Mr. KNOWLES. A good systems analyst could probably organize the thing at a reasonable cost, and when I say a reasonable cost, I mean a few thousand dollars. All it is is a computer programmer just telling the computer what to do. The information is in the computer.

What I mean by that, to give you an example, how do you know you are discriminating in the hiring of an engineer unless you know how many engineers are available who are over age 44?

Mr. RANDALL. We come now to the proposal and the proposition—maybe we ought to, in our parade of witnesses by the Department of Labor, ask somebody to come up to address themselves to the approximate cost of this thing.

You used the words "a paucity of information in the Department of Labor." In what particulars?

Mr. KNOWLES. Well, in organizing the material and making it available to people who should have it available, mainly industry.

Mr. RANDALL. Paucity of information available to industry?

Mr. KNOWLES. Of course, yes. For instance, you have the Wage and Hour people who are responsible for enforcing the Age Discrimination in Employment Act.

I hate to say they have never heard of an affirmative action. They do not understand it.

I have had Wage and Hour people in to visit and have gone into great detail in explaining to them how you can show whether or not an employer is discriminating because of age within his own company.

I hate to say it, but they are rather amazed because they never had any experience in this area. I do not fault them, because you have an enforcement program within the Wage and House Division for a variety of laws and are asking people who are not very experienced to determine whether or not companies are in violation of the Age Discrimination in Employment Act.

Mr. RANDALL. Maybe that is some faceless-nameless person that does not want to look beyond the next partition of what they have got there, a lack of direction. By the way, who is the new Secretary of Labor? I do not know. He has not been confirmed yet.

It was Mr. Dunlop.

Mr. SPRAGUE. It is Mr. Usery.

Mr. RANDALL. He used to be the mediator.

Mr. SPRAGUE. I do not think he has been confirmed.

Mr. RANDALL. So there is nobody, really, running the Department of Labor, except some Acting Secretary. Well, I think your next point was that we can accomplish this demographic analysis and then after that it simply needs to be published for companies to do their own analysis.

That would be point No. 2.

Mr. KNOWLES. Yes.

Mr. RANDALL. Compared with where they stand in the overall picture.

Mr. KNOWLES. Yes, sir. The emphasis today is on the discrimination factors; well, then it would be too late. We should reduce the discrimination factor by taking action.

Mr. RANDALL. It might not be totally too late, but it is a job to prosecute. Ms. Clauss is going to have a whole houseful of people to go around suing all the different violators.

Mr. KNOWLES. I think it is cheaper to do it on the other end and reduce the number of discrimination cases. Right now they are on the increase, and the reason they are on the increase is that when a person gets laid off they have got to look around for a reason why they were selected to be laid off, and after they have excused themselves, as far as their experience and performance and education, they have to look around for some other reason why they were let go; and age is a beautiful one to pick.

That is what we are running into today. People are seeing ghosts, whether it is because of their race, religion, age, or sex.

Mr. RANDALL. Now, I think a major reference would be to the fact that some outside companies are doing the analyses, even though the information is within the Government.

You said there is need for one person and that might be a little ambitious job for one person, but it is somebody who can pull all that together in a booklet.

You moved so fast there. Could you please review that point?

Mr. KNOWLES. You have the census information, which is owned by the U.S. Government. You have outside computer companies utilizing Government information and selling that information back to the Government, which does not make sense at all.

The contract compliance office uses an outside computer company to get the information by way of example.

It seems to me it is a little expensive doing it that way.

Mr. RANDALL. Good point.

Mr. KNOWLES. The Department of Labor is going to love me for this.

Mr. RANDALL. What was that last comment?

Mr. KNOWLES. I said the Department of Labor is going to love me for this.

Mr. RANDALL. The Department of Labor and any of the other executive branch subdivisions have never loved the Government Operations Committee, but the mandate, the charge, the franchise of the Government Operations is, and I think I am putting on another hat now, because I am actually chairman of a couple of other subcommittees, but we are on this for Aging, and, forgive me, we still have oversight responsibility, just as Government Operations does in just two words, the economy and the efficiency of government operations. And so the Aging Committee, when it was created in October 1974, has that oversight responsibility as to anything that has to do with the aged. That is what we are trying to do here today.

We are going to continue to do it, and we are not concerned with anybody in the Department of Labor or anybody else downtown, whether they like us or dislike us. You have been very helpful to us.

I want the staff to get us Bulletin 17-21, chart A-2, dated 1971, and let us chew it over and digest it.

This bulletin was from the Department of Labor, wasn't it?

Mr. KNOWLES. Yes.

Mr. RANDALL. Mr. Knowles, in your presentation here of this work chart, your EEO-1, does that mean "Equal Employment Opportunities," or something?

Mr. KNOWLES. That is it.

Mr. RANDALL. Now, when you say this 35 percent of the work force is above 44, that is in your own company?

Mr. KNOWLES. No. That is the national work force figure against which you measure your own company.

Mr. RANDALL. The next question is, what is it in your company, have you made that analysis?

Mr. KNOWLES. I haven't identified it as Grumman, but that is it.

Mr. RANDALL. They are one and the same?

Mr. KNOWLES. All the statistics on here are basically Grumman figures. For instance, 52 percent of our total work force in 1975 was over age 44, as against the national average of 35 percent, and what that says to me is that we must be doing something right, either consciously or unconsciously.

Now, it is important to see now what happens from year to year. That is one way of measuring your own effectiveness in dealing with the middle-aged or older worker.

Mr. RANDALL. I knew all along something has to be right with Grumman out there. There are certainly a lot of things right with Grumman, but believe me, if you got a record like this, you are to be commended. All of us who are trying to fight this problem of age discrimination just got to plain salute you. You are way, way above the average. You are almost 20 points above the national average.

Mr. KNOWLES. I think our record stands for itself. We have taken a conscious effort in this area, but we, like any other company, have discrimination charges filed against us. We haven't lost any, because I don't believe we have discriminated.

Mr. RANDALL. With a record like this I don't hardly see how you can have any filed.

Mr. KNOWLES. That is how I came across the wage and hour people, they came in to investigate a discrimination case. When I carted out all the analyses that we have been doing for the past few years, then I found out I knew more about it then they did.

Mr. RANDALL. We do not have any information, biographical sketch or anything on you, sir. I would like to know just how you describe your job out there.

What is it?

Mr. KNOWLES. I am the director of personnel.

Mr. RANDALL. You are the top boss man in hiring?

Mr. KNOWLES. As far as personnel is concerned, yes.

Mr. RANDALL. All right.

I was most interested in it, and I think anyone who heard it should also be interested and commend you for it.

You say that you have lost some jobs, you have gone down; we know when you did. You had quite a space program. You lost out on that.

Mr. KNOWLES. That is right.

Mr. RANDALL. I have been around when you had this space contract. You lost some jobs, but you say you have this—whatever you call it, I don't know how you describe it—you handle performance by some sort of a plan, a rating plan?

Mr. KNOWLES. Yes. It is a performance ranking so if you have to let someone go, you let the person go who ranks 25 out of 25.

Mr. RANDALL. What you said is that all RIF's, all reductions in force are handled on a performance rating?

Mr. KNOWLES. That is right, taking into consideration affirmative action.

Mr. RANDALL. I would hope that you might be able to work on some kind of an alternative expression other than "affirmative action." I mean, particularly for the aging here.

Can we do something, cannot we figure something out?

Maybe we are stuck with it. I do not know. Let us see if we can get something that will pinpoint it and show that it is for the aging.

Mr. KNOWLES. Mr. Randall, may I make just one other comment?

Our whole society in our advertising campaigns on television, radio, what have you, all says that if you are not part of the Pepsi generation you are not there. The media is constantly inflicting itself upon all of us, so consequently, everybody is looking for that magical individual who is 28 years of age and has 15 years of experience. I coordinate Long Island personnel jobs through the Personnel Directors' Council.

I can tell you that oftentimes I have openings for personnel people, and I have résumés of personnel people, but I cannot make the marriage, and the reason I cannot make the marriage is because other personnel people are looking for a guy who is 28 years of age with 15 years of experience who will work for \$16,000. When I go back and say, "But I have got a guy that has got 20 years of experience who is 45," they say, "Well, we are really looking for a younger person." I am really saying that personnel people are not really any better than anybody else in this area. If they would only analyze their work force and find out what the average length of service of the people who retire with the company is, they would probably find out that at best they may be there 20, 25 years, and you probably have a better chance of hiring someone at 45 who is going to be there until 65 than you have of hiring someone at 25 who is going to stay there to 65. It does not make good business sense to not hire the middle-aged or older worker on the standpoint that they are not going to be with you that long. I say older people stay longer than younger people. Given a choice between a 50-year-old and a 25-year-old, all things being equal, I will take the 50-year-old man any time.

Mr. RANDALL. Any time you can find some of those folks with 15 years experience that will work for \$16,000 you send them down here.

Mr. KNOWLES. Well, we work cheap out on Long Island.

Mr. RANDALL. You are great folks up there, yes, sir.

After you assemble this performance list you start at the bottom and when it lowers down you pair up. Now, you have touched on an old perennial complaint that everybody talks about—paperwork. You got a nice colleague by the name of Dick White. I happen to be the chairman of another subcommittee called Government Activities. We also have a little bit to do with transportation, whether it is land, rail or truck, air and water. One of our jobs is this paperwork. We are working on that.

Gus Yatron over here, who represents the suburb of Philadelphia, got a paperwork bill through last time. It sounds mighty good. Nobody has ever funded it. Nobody is doing much about it. What we are trying to do if nobody else is is throw some of the old records that have piled up and piled up and piled up and started from scratch and get rid of some of the storage expense.

I want to ask you a question or two about this. Your comment was, I think you said that you hope that if we can get an affirmative action plan underway, your very words were "We pray that your act does not turn into a paperwork act like the women and the minorities but becomes action oriented."

Now, if we can back up a little bit, you went ahead and offered some suggestions, but I am not sure I got all of them down. You referred to Carin Clauss as the reincarnation of Theodore Roosevelt. So if we will go down and look that over a time or two, Mr. Knowles, we would appreciate it.

Do you have any figure or estimate that you can give us as to how much of your time or your company's time is entailed in this so-called paperwork?

Mr. KNOWLES. Mr. Randall, the cost is so phenomenal that I cannot even measure it within my own company as to what it is costing in the area of affirmative action in just identifying labor or

time only with the paperwork. Our affirmative action plan itself, just for the minorities and women, is now over 3,000 pages. I don't care who you are, you are not going to read 3,000 pages on an affirmative action plan.

Mr. RANDALL. For women only?

Mr. KNOWLES. No. For minorities and women. It is over 3,000 pages.

We also have to provide quarterly reports. The last quarterly report took 7,000 pages of computer runs to do.

Mr. RANDALL. Your company alone now?

Mr. KNOWLES. That is right, my company alone.

Mr. RANDALL. It took 7,000 pages of computer runs?

Mr. KNOWLES. That is right, sir.

Mr. RANDALL. Who reads it when it gets there?

Mr. KNOWLES. The Contract Compliance Office loves it. It is eight volumes. We had it delivered by a truck.

Mr. RANDALL. Well, all right.

Mr. KNOWLES. It has got to be simplified.

Mr. RANDALL. Let us cut away some of this stuff and see if there is not a better way.

Mr. KNOWLES. Yes, sir. You have got to have someone who knows how to design, do an experimental design in a simpler fashion.

[Discussion off the record.]

Mr. RANDALL. You said that you cannot estimate the cost, you do not know what the cost is?

Mr. KNOWLES. I am trying to get a handle on it right now.

Mr. RANDALL. Would you tell us if you get it?

Mr. KNOWLES. I would be glad to tell you. I can tell you one thing, it runs into the millions of dollars.

Mr. RANDALL. Please give us that cost in your company alone, if you can.

Now, you did have a couple of proposals near the end of your comments. You said it can be done by one: awareness. By this I assume you mean making the companies aware, is that right?

Mr. KNOWLES. Yes. If you had someone in the Department of Labor that would put together a little booklet, and I am not talking about a big costly thing, I am talking about a little booklet that would be free to employers—

Mr. RANDALL. That has never been done?

Mr. KNOWLES. It has never been done. I communicated with someone in the Department of Labor in March of 1973 about this subject. I said I would love to write the book myself but I just have not got the time. I would think that the Government would have the time to spare one person to sit down and write a little booklet like this that would talk about how you go about analyzing your work force, to find out whether or not you are discriminating. Are you representative within your company of the availability of middle-aged and older workers and what to look for?

Would it not be nice to do it on an awareness basis and get this information out to companies and ask them to do their own analysis without having a horde of Government auditors coming around, you know, coming up with 3,000 pages of affirmative action programs.

Now, if that does not work and it is not done on a voluntary basis through an awareness program then you are going to have to put

some more teeth into the thing and get into what we have with the minorities and women. I am saying that if we cannot get a fair shake for the middle-aged or older worker, then we are going to have to head in that direction. I would like to see it done on an awareness basis where companies would do it on their own because it makes good sense.

I think in this little booklet also that you should explode some of the myths about the middle-aged and older worker. The only thing that I have ever seen that shows any difference between a middle-aged worker and a younger worker is in the area of depression. Not that younger people don't get as depressed as older people, it just takes older people a little longer to come out of depression. In terms of absenteeism, there is no difference in the number of days younger people take off and older people take off, but there is a whole bunch of these myths that older people get sick more often and they are out more often. These are not true.

Somebody has got to do something about assembling some of this information and disseminating it instead of keeping it hidden in some library some place or in some little cubbyhole in the Department of Labor.

What good is the information if it is not made available?

Companies are very pragmatic. They are not going to go out voluntarily and do this on their own. You have got to have some force within Government who is providing the information, who is selling the pragmatic view that it is good business to hire the middle-aged and older people.

Mr. RANDALL. I wish some of our colleagues were here so they could speak for themselves, but the Chair believes that we are getting a running start here in this hearing on age discrimination. There has been some really good things started here. When you get around to it after this little booklet, which could be published for awareness and has never been, then you get back to your second point, which we think was that you are going to have to put some teeth into it if the voluntary failed.

Mr. KNOWLES. That is correct.

We can be motivated in two ways. We can be motivated in doing it the nice way. If that does not work, we can be motivated because you are going to kill us if we do not do it.

Mr. RANDALL. I guess maybe one of our next witnesses should or ought to be the expert on bureaucrats. Let him be told by some of these folks down at the Department of Labor why such a simple thing as a tiny little booklet has never been done. It will not phase them any. They will just have that great big blank look when we ask them why they have not done it. They will sit there and mumble a little bit and that will be the end of it. At least we will have put them on the record and have asked them why they have never done such a simple thing which you said you could write it yourself and distribute it to every industry in America. Those ought to be some of our next witnesses.

Mr. KNOWLES. A 10 to 12 page booklet should do the job.

Mr. RANDALL. Of course we will have some beautiful explanations here, but that doesn't make it so. The fact remains either they have or they have not.

You used to hire a lot of folks up there. It was up to 30,000, wasn't it?

Mr. KNOWLES. We had 37,000 employees. Presently we have 23,000.

Mr. RANDALL. Who is your president now?

Mr. KNOWLES. The present of the Grumman Aerospace Company is a fellow by the name of George Skurla.

Mr. RANDALL. Lew Evans was a former president of Grumman, wasn't he?

Mr. KNOWLES. Yes, sir.

Mr. RANDALL. Now, the next point. You mentioned those myths such as an older worker gets sick more often. That simply is not true with our experience here on the Hill. It is more often the person in his early twenties that is always off. The old folks show up day after day. They are here all the time.

Now, what is it going to take to get something developed on that?

Mr. KNOWLES. Well, I would include in this little booklet, facts exploding the myths about the middle-aged and older worker. You know, here are the myths and here are the facts.

Now, the Department of Labor has done that as far as women are concerned. They have done a one-page handout on women exploding the myths about women. I see no reason why they cannot explode some of the myths about the middle-aged and older worker. By that I do not mean to knock young people. There is nothing wrong with young people. This is just an effort to give a boost to older people.

Mr. RANDALL. Now, do you not really mean what you said in your very last comments that you would like to see Mrs. Carin Clauss put out of business? Don't you mean you just hope that she will not have any work to do?

Mr. KNOWLES. Exactly.

Mr. RANDALL. She needs to be down there. We just want to see that she doesn't have anything to do.

Mr. KNOWLES. She is a super person.

Mr. RANDALL. Well, we are going to have her as a witness. We are also going to have some of these other Department of Labor folks down here. While it is headless, like the headless horseman, maybe we ought to have whoever is the active head come in before we get the new Secretary, somebody way up the line so he can scurry around and figure out way we have never had this booklet or why we have not done any of these other things. It might be good to get him in before they have a new man down there. Maybe we ought to do it next week.

Well, our staff, Mr. Mike Murray, has some questions. We might have one or two more.

Go ahead, Mike.

Mr. MURRAY. Thank you, Mr. Chairman.

One question that comes to mind is in the area of affirmative action. Either one of you or both can respond to it.

Sometimes a lot of flak is raised by unions and others concerning a forced affirmative action program that is outside their negotiating realm.

How would this fit into an affirmative action toward aging?

Mr. SPRAGUE. Let me try it first.

I think that there should be no problem with organized labor. The affirmative action on age would more or less coincide with the seniority concept, I should think.

Now, when unions negotiate for early retirement provisions, as they frequently do, this would then be voluntary, the worker could take early retirement voluntarily or he could stay in the job under these provisions, so it would give the worker more options. So I would not think there would be any problem from labor. That would be my estimation.

Mr. KNOWLES. Our company is nonunion, so I would not comment about our own company. I would think however, that the very essence of any union contract is the seniority principle. Obviously there is a relationship between seniority and age, so I could not imagine why organized labor would have any trouble with the Age Discrimination Employment Act or any further part of the act.

Mr. MURRAY. You mentioned earlier, Mr. Knowles, that reductions in force are by performance along the lines of affirmative action for minorities and women.

Is there not a real possibility that an affirmative action for aging would conflict with the affirmative action for minorities and women, particularly in the area of layoffs?

Mr. KNOWLES. Well, let me put it this way: The way legislation is coming through now, there is hardly anybody left who is not in a protective group. We have a few WASP's between the ages of 18 and 40 who may not have any protection, but everybody else does have protection.

Mr. RANDALL. You mean a bee of some kind?

Mr. KNOWLES. The WASP is the white Anglo-Saxon Protestant. And it is just a matter of time before they revolt and we start the whole thing all over again, you understand. Even those people will eventually become middle aged and older, God willing.

Affirmative action costs money. I do not see it coming as any particular conflict. We have learned to work with these programs, even though it is difficult.

If you lay off a person who is 63 years of age and you want to ask why and someone else says "because he is 63 and only has 2 years to work." That is not legal or a good reason to lay someone off. That is no basis on which to do it. You have got to do it on the basis of either seniority or you have got to do it on the basis of performance without regard to age or any of the other things.

Mr. MURRAY. I noted a bit of a difference between your approaches to affirmative action. Mr. Knowles talked about a voluntary awareness type program to start with. Mr. Sprague talked more about writing into the law timetables and goals.

Can these be done at the same time, or is it just a question of the enforcement or penalty attached to it?

Mr. KNOWLES. I do not think there is any particular disagreement between Norman and myself. I think Norman may have concluded that awareness programs have not worked. I would agree with him, they have not worked. I do not think enough effort has been put into doing it on a voluntary basis. I am only saying that if it cannot be done on a voluntary basis with self-policing by companies, then you are going to be forced to have the Government do the policing. I would much prefer seeing it done on a voluntary basis. I do not have a great deal of hope that we would necessarily accomplish the results by doing it that way, but I think industry deserves the opportunity to be self-policing first.

Mr. MURRAY. So that any amendment would more or less lay out a guide or a plan of attack for a corporation with the Government supplying information. Then after 3 years or some reasonable time, start stronger enforcement?

Mr. KNOWLES. In the enforcement of the affirmative action plans for the minorities and for women each year it just gets continually more difficult and more and more analysis is required, and that is how the plans have gone from one volume to eight volumes, because the analysis keeps increasing, increasing, increasing.

Now, there is a point of diminishing returns on analysis. I just want to say there are ways to do an analysis that is meaningful and you can tell whether or not the company is doing the job without getting carried away, which I believe the other programs have now reached.

I do not know if that really answers it.

Each year the Government can come out and rerelease either order 4 or order 14. Order 14 is really the procedural part of the law that says how the analysis is done.

Mr. RANDALL. Order 14?

Mr. KNOWLES. Yes; order 14.

Mr. RANDALL. That is the order?

Mr. KNOWLES. It may be DOL. It could be the Office of Federal Contracts Compliance.

I guess what I am saying is, keep the thing simple to begin with and see if it works. If it does not work, then you have to revise it again.

Mr. MURRAY. Do you go along with that, Mr. Sprague?

Mr. SPRAGUE. Well, I would still stick with the goals and timetables. When I testified on this act in 1967 I was very concerned that we have sanctions in there. I think that you have got to have teeth in the law, and I think we all understand the work, the paperwork, et cetera, which that generates. If we could accomplish that without much paperwork, wonderful. I think, however, that the law would have to be specific about goals and timetables.

Mr. KNOWLES. I would not disagree with that. However, if I could just take 30 seconds to describe how you would do it—

Mr. RANDALL. You can take as long as you want. We can stay here all afternoon. We have got leave to sit while Congress is in session.

Mr. KNOWLES. Let me just describe how you do an analysis. You start off and you say, "OK, here is an analysis for the company." Then you break it up into major segments of the company. Then you break it into minor segments of the company. Now, conceivably a company could have 1,000 different departments in it. In effect, you have 1,000 different affirmative action programs. That is one way of looking at it. It is a fairly complex matrix. Then you analyze the thing from the standpoint of total minorities and women, as an example.

Then you break it out into officials and managers, and then with officials and managers you break it out into supervisors, that is, the title "supervisor." Then you have to break it out into every different type of supervisor within the company, and it just becomes ludicrous.

So what I am saying is, setting goals and timetables is fine, but do it on a reasonably broad level so that it becomes meaningful and stop measuring the fine details. Do not measure each and every little tiny department in the company. Let the company do that analysis.

Let the company be the watchdog for the various functions and departments within the company. Do not have the Government do that. That is what has caused the problem with the affirmative action plan with the minorities and women. It has gotten, as I say, completely out of hand in my opinion in terms of how deeply the analysis goes. You get into things like focus jobs, where you are now measuring—

Mr. RANDALL. What type of jobs?

Mr. KNOWLES. Focus jobs. For instance, the availability of minorities is 10 percent in a given type of job. If you have 20 percent more or 20 percent less than that 10 percent that becomes a focus job. You have to offer a written explanation of why you have too many or why you have too few. You must do that for every job in every department. When you get it down to departments where you have 15 people and the availability is 5 percent, you are talking about three-tenths of a person and six-tenths of a person, and it gets absolutely out of hand.

It is very difficult to verbalize this thing. Certainly, if I had the material here, I could show you what I am talking about. You would be appalled, sir, if you ever really got into an affirmative action plan and could see what is going on as far as the paperwork is concerned. It befuddles the entire purpose and issue of the affirmative action.

Mr. MURRAY. Thank you, Mr. Chairman.

Mr. RANDALL. Thank you, Mr. Murray. Thank you for your very able contribution.

Now, Mr. Knowles, Mike asked both you and Mr. Sprague if there was any real disagreement in your two approaches, yours being one of company awareness, Mr. Sprague's being more determined to set a timetable and some goals.

I was interested in the comment of yours, and I hope I have not misplaced it: I do not think I have.

Yes; you said your company was nonunion, sort of like Delta; in other words, Delta is nonunion.

Mr. KNOWLES. That is correct.

Mr. RANDALL. And you had elections up there from time to time?

Mr. KNOWLES. No, sir.

Mr. RANDALL. Nobody has ever got enough votes to have an election?

Mr. KNOWLES. No, sir. It has not been necessary.

Mr. RANDALL. In other words, everybody is happy. That is what they call national resiliency.

Mr. KNOWLES. They are happy enough to think that the company could do a better job taking care of them.

Mr. RANDALL. That is a very interesting situation, and I am glad to hear of a case like that.

There are some good unions and quite frankly there are some bad unions; but the good unions are the ones that have had good records. You have said, in effect, that the unions have so carefully linked seniority and the relationship between seniority and age that you do not believe they would have too much of a problem with this kind of an approach.

You do not have any, but you talk to the other companies, I guess, pretty much.

You have sort of a seminar, conference, or get-together with all of your peers in the other big companies?

Mr. KNOWLES. Yes.

Mr. RANDALL. What did you mean, Mr. Knowles, when you said, "Under the present legislation, there is hardly anyone in America that is not protected any more."

Mr. KNOWLES. That is right. You have four minorities; you have women; you have the disabled; you have veterans; you have the Age Discrimination in Employment Act; you have legislation protecting Catholics, Jews, and southern and middle Europeans.

What is left?

We also have the National Alliance for Business pushing for ex-convicts, so that leaves very few people who do not fall into at least one class.

Mr. RANDALL. And then you said even the little narrow gap of the WASP's from 18 to 40 are soon going to be protected?

Mr. KNOWLES. In New York we are taking care of that because we have recently had a law passed for people between the ages of 18 and 65, and I am not quite sure what that does to the Age Discrimination Employment Act protecting people from 40 to 65.

Mr. RANDALL. You might have a collision there, the immovable object meets the irresistible force.

Mr. KNOWLES. My first impression is that it neutralizes the Age Discrimination in Employment Act. It makes it somewhat meaningless.

Mr. RANDALL. You mean your legislature actually passed this thing up there?

Mr. KNOWLES. Yes, sir.

Mr. SPRAGUE. You remember when Mayor Beame tried to lay off the older workers, Secretary of Labor Brennan had to tell him that was against the law.

Mr. KNOWLES. That is what I say: it is the older person discriminating against the older person.

Mr. RANDALL. This is off the record.

[Discussion off the record.]

While I gather that there is really no basic uncompromising disagreement between Mr. Sprague and Mr. Knowles on what can be done, you finally said, Mr. Sprague, that you still stick with your goals and timetables. You believe we have got to have some sanction and some teeth. Mr. Knowles said that he would not disagree, but he did go ahead, I believe, and say that one of the problems there was a company could have so many different categories that when you get into this thing of focus jobs, you can get down to where you start soliciting three-tenths of a person to six-tenths of a person.

Mr. KNOWLES. Yes. If you were to go around tomorrow and put legislation in that provides goals and timetables for hiring and promoting middle-aged and older workers, you could not do it because you have nothing to measure against. You would not be able to know whether or not you were discriminating; you must have a yardstick, you have got to have something to measure against, and that information is not readily available. That is why I quoted the only figure that I am aware of against which you can compare. That figure, however, does not break it out and say what is the availability of officials and management, what is the availability of professionals or what is the availability of engineers or accountants or anything you want. That information is not available.

Mr. SPRAGUE. You would have to have a work force analysis, as part of the goals.

Mr. RANDALL. Well, most of the affirmative action programs, if we are going to use that expression, or the different plans, start out as we recall it from a percentage of the population to see if within a company compliances are going along in that percentage. I do not know whether it is true or not but it is harder and harder to get a percentage of the four minorities, that would mean the blacks—

Mr. KNOWLES. And the Spanish-Americans, Asians, and American Indians.

Mr. RANDALL. You cannot leave the Indians out.

I suppose the ideal situation when you would be in complete compliance you would find if you could get somebody who could do a job, an elderly lady who was of Indian descent or something like that, you would really be in.

Mr. KNOWLES. You call them two-for's. Or you can have three-for's.

Mr. RANDALL. But we have always been led to believe that approximately 10 percent of the population of America is black, and as long as the company is having 10 percent, that is your starting point, that is pretty much in compliance.

Mr. KNOWLES. Not true. You have 11 percent black population, but you have got different concentrations. For instance, on Long Island, the total minority population of Long Island is 5.81 percent.

Now, is it reasonable to expect a company to have 11 percent blacks alone in an area where there is only 5.81 percent representation of total minorities as against where we might say Los Angeles where the total minority percent might be 23 percent or New York City where it might be like 26 percent or 27 percent?

So you must really analyze this, and here is where the failure has come. You have to analyze in relation to what your work area is.

Now, I would expect that in the case of the middle-aged and older worker you would probably have a reasonable uniform distribution with the possible exception of a few areas like Florida where you have a high concentration of older people.

Mr. SPRAGUE. Or some other States like Iowa.

But, Dan is right, it would have to be geared to a local situation.

Mr. RANDALL. Mr. Murray has another question.

Mr. MURRAY. We talked about the question of mandatory retirement and a couple of the exceptions in the law about occupational qualifications. Some people say mandatory retirement is a good thing because it helps younger workers move up, and others say no, it is not because it hinders people who are not ready to retire.

Do you have some thoughts about the question of mandatory versus flexible retirement?

Mr. KNOWLES. Yes. I have one. I see it heading in two directions at the same time. We are heading toward earlier and earlier retirement and at the same time heading for older and older retirement. What it really is coming down to is individual choice of how it fits you as an individual in your desires.

I just think it is a question of choice.

Mr. MURRAY. Do you have the means in your industry to measure people's functional capabilities?

For example, what would be the determining factors for somebody age 65 or whatever is the normal retirement age in your company in order to say that person can still do the job no matter what his age?

Mr. KNOWLES. We like most companies have a normal retirement age at 65. However, we would review people for continued employment beyond age 65 on an individual basis of their performance, their health, the ability to do the job and that type of thing, but it is done on an individual basis. Some people are worn out at 50 and other people are still doing the job conceivably at 80. It is an individual thing, I think.

Norman has a lot more to say on this.

Mr. SPRAGUE. I would like to see that upper limit moved upward from say 65 to either say 70 or 72. Now, there is some basis of precedence in age 72, because that is the time at which social security recipients can receive their benefits and earn as much money as they want.

Mr. MURRAY. That age would be in the law so that if somebody is forced to retire before 72 from a job on the basis of age and not on health or whatever, that case would be discrimination and would be within the scope of the Age Discrimination Act?

Mr. SPRAGUE. Yes.

Mr. RANDALL. Gentlemen, the bells have rung. That is a three-bell which is the call of the House. We have a bill today, I believe it has passed the Rules Committee, having to do with jobs, emergency employment. It is called by a different name. Gentlemen, both of you, each of you, I know that I can speak for the members of not only the subcommittee but the full committee who are not with us, that you have given us, as I said earlier, a very fast, running start on this problem. You have pointed to some folks that we are going to have to call in, some things that we are going to have to do. This is not a little, old inquiry that can be shunted off to the side. The fact that this subcommittee was named No. 1 subcommittee out of all four which break down the problems and needs of the aged and elderly into four categories: Retirement income and employment, health and long-term care, housing and consumer interests, and Federal, State, and community services, is evidence of the importance we place on this subject.

The starting point in order to meet any of these other needs is some sort of income program. Employment opportunities and age discrimination are certainly closely related to this point. We would not expect the other subcommittees to agree, but we believe that this area is the most important of all of our inquiries into the problems of the aged.

We are going to pursue it.

We are grateful to you gentlemen, exceedingly grateful to both of you. You have been forthright and straightforward with us and we are thankful to you.

The committee will adjourn subject to the call of the Chair.

[Whereupon, at 12:30 p.m., Tuesday, February 10, 1976, the committee recessed, to reconvene subject to the call of the Chair.]

IMPACT OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

WEDNESDAY, FEBRUARY 18, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RETIREMENT INCOME AND EMPLOYMENT,
SELECT COMMITTEE ON AGING,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 2203, Rayburn House Office Building, Hon. Wm. J. Randall (chairman of the full committee and the subcommittee) presiding.

Subcommittee members present: Representatives Wm. J. Randall, of Missouri, Thomas J. Downey, of New York, Charles E. Grassley, of Iowa, and Gilbert Gude, of Maryland.

Mr. RANDALL. The Subcommittee on Retirement Income and Employment will come to order.

Yesterday, the subcommittee met in what could be called an informal session. It was not a hearing. It was a briefing session. And the reasons, quite validly we thought, were that the discussion concerned some matters that were still being considered under litigation.

It was a very careful effort not to prejudice any of the efforts of those who have been working on those cases. Today we, in a formal manner, further reviewed the enforcement of the Age Discrimination Employment Act, passed back in 1967. We are happy to have with us today the heads of some of the units down there at the Department of Labor who were charged with the enforcement of ADEA.

We are particularly pleased to have back with us again four witnesses from the field, you might say from the four corners of the country: San Francisco, Chicago, Dallas, and the Carolinas. They will contribute to the record later on and review some of the things and be submitted to questions on some of the matters that were covered yesterday.

The Chair is well aware of the fiscal constraints that this enforcement unit and all enforcement units operate under. That's why this committee has offered and actually provided the necessary financial assistance to bring these witnesses to Washington to testify.

I think that the effort yesterday and today should serve to demonstrate that what is happening at the front line, down on the cutting edge, if you want to use that expression, or as someone else has said, where the rubber meets the road. We are trying to find out what is being done when there are complaints of age discrimination and who and how much and when is something being done about it to improve the operations, if you please, of ADEA.

Our first witness will be a gentleman by the name of Ronald James. He is the brandnew administrator of the Wage and Hour Division.

I don't know how long he has been there. I imagine a few months, but I just found out some facts about him that make him a pretty credible witness. I found out, and I didn't have to find out—I remembered—but, you know, Mr. James, your name is fleeting and you are a hero today, and as long as your name is in the paper every day, you say, "Well, who is that fellow" when you read it again someplace.

Mr. James was a great football star at the University of Missouri, sort of like the galloping ghost. He ran all around the place there and they couldn't lay a hand on him. You have some good credentials to start out with, sir.

Go ahead, please.

STATEMENT OF RONALD JAMES, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION; ACCOMPANIED BY CARIN CLAUSS, ASSOCIATE SOLICITOR FOR FAIR LABOR STANDARDS; GILBERT DRUCKER, SOLICITOR'S OFFICE, CHICAGO; RONALD GASWIRTH, SOLICITOR'S OFFICE, DALLAS; JAMES STEWART, COMPLIANCE OFFICER, WINSTON-SALEM; JOHN ALMERICO, COMPLIANCE OFFICER, SAN FRANCISCO; FRANK MCGOWAN, WAGE AND HOUR DIVISION, WASHINGTON, D.C.; AND RONALD WHITING, SOLICITOR'S OFFICE

Mr. JAMES. Thank you very much, Mr. Chairman, for your very kind remarks.

I might add that in 1958 not only was there laying on of the hands by the Oklahoma team but at that time they were 33 deep and the first team was as good as the third team. They, in fact, laid everything on me.

Mr. RANDALL. This is an important part of our input.

Mr. JAMES. I was going to indicate we redeemed ourselves the following year.

Mr. RANDALL. Were you in that game at Norman?

Mr. JAMES. Yes; I was.

Mr. RANDALL. Go ahead.

Mr. JAMES. Mr. Chairman, I want to thank you and the members of the subcommittee for this opportunity to testify about the enforcement of the Age Discrimination and Employment Act.

My main purpose will be to give you an overview of our activities—an accounting, if you will, of our stewardship since the law went into effect on June 12, 1968. My statement is relatively brief, since I have with me representatives from the Wage and Hour Division and from the Solicitor of Labor, Mr. William J. Kilberg's staff, and I want to leave sufficient time for questions concerning their experience in enforcing the law at the work place and in the courts.

Mr. Chairman, since there are some people who were not here yesterday, maybe I can indulge the Chair for a minute and ask the gentlepersons to specifically identify themselves since you will be asking them questions.

Mr. RANDALL. Certainly. Please do.

Ms. CLAUSS. Carin Clauss, officer of the Solicitor.

Mr. McGOWAN. Frank McGowan, in the Wage and Hour Division in Washington.

Mr. DRUCKER. Gilbert Drucker, trial attorney with the Department of Labor in Chicago.

Mr. GASWIRTH. Ron Gaswirth, regional solicitor in Dallas.

Mr. STEWART. James Stewart, assistant area director in North Carolina.

Mr. ALMERICO. John Almerico, area director in San Francisco.

Mr. WHITING. Mr. Whiting, from the Solicitor's office.

Mr. JAMES. I would like to indulge the Chair for 1 more minute. Since there are titles thrown out here, and there were some questions raised yesterday, I would like to point out that we, as other Federal agencies, are organized along the 10 regional system.

The primary responsibility for ADEA rests in the Wage and Hour Division of the Department of Labor. We have a very small staff in the 10 regions. In addition to the 10 regional offices, we have 87 area offices. Those are offices that house the compliance officers, the people who, as you indicated, Mr. Chairman, are on the front lines.

Sometimes those area offices have what I would call satellites. That is, somewhere out of those offices, perhaps at a post office, a compliance officer is stationed. In this context also, there are 10 regional solicitor's offices; and if we in the Wage and Hour Division are unable to achieve voluntary compliance from persuasion and negotiation, the matters are then referred to a regional solicitor's office for enforcement.

Mr. Chairman, when Congress enacted this law in December of 1967, it expressed the conviction that age discrimination in employment—which it found to be all too prevalent—was an intolerable fact of life which was inconsistent not only with this country's economic well-being but also with its basic moral precepts. The purposes of the law were set out in section 2. They were to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; and to help employers and workers find ways of meeting problems arising from the impact of age on employment.

We have tried through our informational and enforcement efforts to achieve these purposes. Because of the need to maximize our resources, we have tried to tailor our efforts to specific needs and cases. Thus, in the beginning, we instituted a massive education and information effort in order to advise employers, employment agencies and labor organizations about the law and about their responsibilities under the law. An equally important job involved getting the word out to the American workers and informing them of their rights and protections. This was where we placed our primary emphasis. There were mass mailings of posters explaining the law, and employers were required to display them where they could be seen by all employees and applicants. An interpretative bulletin was published in the Federal Register, as were new recordkeeping regulations, and they were given wide dissemination.

The Department also prepared a booklet and a pamphlet explaining the act's requirements in nontechnical language, and more than a million copies of these were distributed. The cooperation of the

media was secured to give continuing attention to the act. This included not only the usual radio, television and newspaper sources, but also black and Spanish press, radio and TV, publications directed to women, law journals and trade publications. Briefing conferences were held across the country to which the general public, as well as business and trade representatives, and representatives of women's groups and older workers, were invited.

We also began a program whereby employers who sought to develop their own audit and compliance programs were given assistance in training their staffs and in preparing manuals and guides. In addition, we encourage contact with our local offices, that is, the area offices I talked about and the regional offices, by anyone who might have questions about the law. Our objective in doing all this was to achieve, through education, the highest possible level of voluntary compliance. We have continued these activities over the years although, quite obviously, our enforcement efforts have not been limited to these activities. We have and will continue to strive for a balance between education, for those who want to comply, and vigorous investigative and enforcement efforts for those who do not comply which, when necessary, can rely on the sharp teeth of the law. As time has passed, our emphasis quite properly has shifted toward investigative and legal enforcement.

One of our first targets was discriminatory advertising which indicated an illegal preference for younger workers. This was given priority since the help wanted ads are, in a very real sense, the threshold to employment. This effort has been highly successful. In one 60-day period in late 1971, for example, we monitored daily and weekly newspapers across the country intensively, and found some 8,000 discriminatory ads. These were followed up—and if the employers or employment agencies did not cease this practice, injunctions were secured. The problem has not been completely eliminated, but it has nowhere near the dimensions now that it had previously.

As we have gained experience, we have also developed new procedures and adapted the old ones to better combat the unique problems of age discrimination. One new procedure is the mediation of complaints. This is an alternative to investigations in those instances where it appears that alleged violations would be limited to the complainant. In this procedure, the compliance officer encourages and assists the parties to work out a mutually satisfactory solution to the alleged discrimination. Frequently, this results in a job, or retention on the job, or increased retirement benefits. Last fiscal year over 1,500 persons were aided in this way and over one-half million dollars in lost wage payments secured.

We have also adopted a flexibility in our investigation procedures so that what is done by the compliance officer is tailored to the particular facts at hand on a case-by-case basis. Thus, an investigation might encompass all employment practices of an employer over the entire 2-year statutory period, which is what we call a full investigation. At the other end of the spectrum, an investigation might be limited to a single act, such as the termination of one employee. Generally, a tentative decision about the procedure to be used is made when the enforcement action is started. The compliance officer then continuously reevaluates that decision as facts are developed.

Thus, what starts as a mediation action may end up as a full investigation. Or, a full investigation may later be limited to only a certain period of time—or to just one practice—if that is where the problems are. The basis for these judgments is simply what is the most effective, efficient procedure in this case to achieve the purposes of the law.

Our years of experience with investigations and enforcement, and our continuing training of staff have made this flexibility in procedures possible. I would not, however, want to leave the impression that the enforcement of this law has thereby been made easy. On the contrary, age discrimination enforcement actions are among the most difficult, if not the most difficult, we have. Only rarely is age discrimination evidenced by overt statements or policies.

The compliance officer often must compile a vast amount of data on hundreds of employees and applicants as a starting point. These data must then be analyzed in a variety of ways to determine how employees in the protected age group are affected by personnel actions. If such analyses show that they are adversely affected, the actions must be checked out on an individual basis and any reasons other than age for the adverse actions which the employer may have must be further checked.

Having thus identified violations, the compliance officer then seeks to have them corrected, and the necessary actions taken to “make whole” any persons damaged by the discrimination. These are difficult negotiations, and can be time consuming. When they are successful, as they are in over 87 percent of our administrative actions, we say that we have secured voluntary compliance.

In others, however, there may be a refusal to correct illegal practices, or to make whole individuals discriminated against. And in some, there may be an honest disagreement as to the law’s applications or interpretation. Where any of these are encountered, consideration must be given to filing suit in the courts. The resulting Federal court actions, initiated by the Solicitor’s office, are a strong reinforcement to our administrative efforts, and are also the means by which the application of the law is clarified.

This, very briefly, Mr. Chairman, describes the various methods we use in administering and enforcing the act. I would like now to summarize the results of these efforts.

Since the act’s effective date, we have initiated over 35,000 age-discrimination actions. These enforcement actions have disclosed violations affecting over 34,000 persons, with monetary damages of almost \$22 million to 8,000 individuals. Over \$7 million in lost wages has been restored to 2,000 persons discriminated against on the basis of age. We have also secured employment, reemployment, promotions, or the restoration of retirement and other benefits for some 15,000 persons, in the 3 years in which we have kept these particular figures. And we have removed discriminatory policies and practices that limited employment opportunities for older workers from hundreds of thousands of jobs. In the last 3½ years, for example, over 163,000 job opportunities, previously closed to those over 40, have been opened.

As Mr. Kilberg has detailed in his written statement, some 261 lawsuits have also been instituted. The total result of our combined efforts, we believe, reflects a major achievement. We fully recognize, however, that this is just a beginning.

Each year the number of complaints we receive continues to increase. In the first 6 months of this fiscal year, we received complaints alleging illegal age discrimination in 2,575 establishments. This is more than the total number of complaints received in fiscal year 1973. The consistent increase in the last several years is clear evidence, we believe, that the problem of age discrimination in employment is a long way from being solved. This is also clear from the results of our enforcement actions. In fiscal year 1973 we found \$1,866,226 in lost wages due to 1,031 persons who had been discriminated against because of their age. In the first 6 months of this fiscal year we found \$4,635,371 due to 1,113 persons in the protected age group. And our backlog of complaints is rising. In 1973 it stood at 1,229. Today, it is approximately 2,500.

We are and we shall take steps to improve our efficiency and effectiveness. We are training our field staff in specialized techniques and procedures which are necessary for effective investigation of the more complex age discrimination cases. We have also established 27 discrimination specialist compliance officer positions in the field. These positions will give us the expertise needed on the most complex cases; and the specialist by being readily available to the balance of the enforcement staff, will reinforce and enhance their effectiveness. We also, in an effort to alleviate the procedural problems faced by private litigants, are revising our form letters, in order to facilitate the employee's notification process, and are changing the ADEA poster to indicate more clearly the act's time requirements.

Our basic goals, in conjunction with the Solicitor's office, is to obtain compliance with the act's requirements and to establish legal precedents which will clearly define and outlaw the kinds of systemic discrimination to which millions of older Americans are subjected.

This concludes my prepared statement. I will be happy to answer any questions or you may wish to question the various experts I have with me. I also would like to submit for the record Mr. Kilberg's written statement.

Mr. RANDALL. Do you want it following your statement or at what point do you want it in the record?

Mr. JAMES. Probably at this point in the record.

Mr. RANDALL. You have all heard the request of our witness, and so the Chair will pose the question.

Unanimous consent has been proposed that the statement of Mr. Kilberg, who is a Solicitor and General Counsel for the Department of Labor, be printed in the record immediately following the testimony of Mr. James.

Is there objection?

Hearing none, it is so ordered.

[The statement of William J. Kilberg follows:]

STATEMENT OF WILLIAM J. KILBERG
SOLICITOR OF LABOR
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON RETIREMENT INCOME AND EMPLOYMENT
OF THE
HOUSE SELECT COMMITTEE ON AGING

February 18, 1976

Mr. Chairman and Members of the Subcommittee:

I would like to thank you for this opportunity to submit this statement about some of our litigation problems and some of the more interesting legal issues that have come up in our cases under the Age Discrimination in Employment Act.

As you all know, the Age Act went into effect on June 12, 1968. Since that time, the Department has instituted 261 law suits. This number, of course, represents only a small percentage of the total number of age violations handled by the Department, since the greatest majority of them (about 80 percent) are settled at the administrative level. Nor does it include the large number of cases settled by the Solicitor's Office short of litigation, including several cases which resulted in monetary payments in excess of \$75,000 and up to \$250,000, and one case which resulted in the hiring of 87 administrative and managerial employees and 69 hourly rated employees in the protected age group -- in one year and by a company which previously had hired almost no one over the age of 40.

Of the 261 law suits filed, 212 have been concluded and 49 are still pending. Seventeen of the concluded cases were resolved adversely to the Department; the other 195 were resolved in the Department's favor. In this connection, it should be noted that a number of these cases involved discriminatory advertising and recruitment practices and thus did not result in any back wage recovery. Others, however, involved substantial monetary amounts, such as Standard Oil (which resulted in a recovery of \$2 million in addition

to offers of reinstatement to 120 employees, 35 of whom accepted reemployment) and Pan Am (which resulted in a recovery of \$250,000). Individual recoveries have been as high as \$110,000 and there have been several in excess of \$60,000.

The record has been less favorable in suits brought by individuals -- with over two-thirds of them having been dismissed on procedural grounds without any consideration of the merits. The appellate decisions have likewise been disappointing; of the 25 decided cases (including 8 brought by the Secretary and 17 brought by individuals), only 8 have been favorable (including 3 brought by the Secretary and 5 brought by individuals). It should be remembered, however, that the Age Act is still a new law -- having been considered by the appellate court only since late 1972 -- and that it is not unusual to experience some initial difficulty. We experienced such difficulty in the early years of the Fair Labor Standards Act and yet subsequent developments made that Act one of the most meaningful in terms of its benefits to the American worker.

Most of the appellate losses have involved procedural issues and have occurred in cases where the Secretary had no opportunity to participate. Significantly, there were strong dissents in three of the four private suits where we did participate as amicus. We recently presented amicus arguments in three appellate cases involving the same procedural issues that were lost in other circuits and we have every hope that one or more of these cases will result in a conflict with the other decisions and thus become the vehicle for bringing these procedural issues to the Supreme Court.

The one procedural issue that we lost in our own litigation involves the statutory requirement that the Secretary "conciliate" before instituting suit. We do not object to this requirement and in fact we engage in the same general kind of conciliation under the Fair

Labor Standards Act and Equal Pay Act even though conciliation is not required by those statutes. In Brennan v. Ace Hardware Corp., 495 F.2d 368 (C.A.8), however, the court imposed a standard of conciliation which we think goes far beyond what Congress ever intended and which imposes a time consuming delay before suit can be instituted. As a result of this decision, we have a number of large pattern and practice cases which, although extensively developed, have not yet been filed.

The two other major issues on which we have received adverse appellate decisions involve the scope of the Act's bona fide occupational qualification exception and the legality of involuntary retirement prior to age 65. First, however, it should be emphasized that we have only one adverse decision on each issue -- Hodgson v. Greyhound Lines, Inc., 499 F.2d 859 (upholding as a "b.f.o.q." the company's refusal to hire bus drivers over the age of 35) and Brennan v. Taft Broadcasting Company, 500 F.2d 212 (upholding a forced retirement that was based solely on age on the ground that it was authorized by the terms of the company's profit sharing pension plan). I should also point out that the district court's decision in Greyhound was favorable as was the strong dissenting opinion in the Taft case. Unfortunately, we were not able to get either of these cases to the Supreme Court. However, we currently have two cases pending which we hope will result in a conflict with Greyhound (involving bus drivers and test pilots). We also have several other cases on the Taft issue of involuntary retirement.

We can, of course, only speculate as to the reasons for the rather rigid approach taken by the appellate courts in dealing with age discrimination. Undoubtedly, one reason is the broad language of the Act which, particularly in the procedural sections, is susceptible of more than one interpretation. Another

reason, we think, relates to society's perception of age discrimination. There does not appear to be the same moral outrage that we find in race and sex discrimination. It is still socially acceptable for companies to boast that the average age of their management is only 35, or to promote individuals for developing dynamic young tigers. No one is rewarded for building a staff of old lions. The myths about the affects of the aging process are widely accepted -- even by older individuals who, although they themselves work, believe that older bus drivers are less safe because they are more susceptible to heart attacks, or that workers over 55 cannot withstand the rigors of demanding physical work. The widespread acceptance of these myths has made it necessary for us to resort to extensive medical testimony in our litigation and also to devise some practical means for demonstrating physical capabilities of the older worker. Our attorneys spent 3,500 hours in preparing and trying the Greyhound case and 1,900 hours in preparing and trying the McDonnell Douglas case.

Thus far I have discussed our problems. We also, however, have had considerable success in the appellate courts on the issue of discriminatory advertising and on the very important issue of what constitutes a prima facie case of discrimination. One important holding is that a violation has occurred if age is even one factor in the employer's decisions. Hodgson v. Ideal Corrugated Box Co., 10 FEP Cases 774, 750-751, 8 EPD ¶9805 (N.D.W.Va. 1974); Wilson v. Sealtest Foods Division, Kraftco Corp., 501 F.2d 84, 86 (C.A.5, 1974). Thus, although an employee may be lawfully discharged for unsatisfactory work, he may not be discharged if equally unsatisfactory younger workers are retained and if the reason for his selection is age.

The courts have also held that once the Department has established a prima facie case of discrimination, it does not have to make an affirmative showing that there were no other factors other than age on which the employer might lawfully have justified his action. The Department's prima facie showing can be established

in a number of ways: in some cases, we have evidence of overt discrimination, such as a notation that the employee is "too old"; in other cases, we have objective evidence that the person discharged or not hired was well qualified; and in still other cases, we have statistical evidence showing a disparate impact on the older group which cannot be explained by random selection. The employer, of course, is still free to rebut this prima facie showing and, if that fails, to mitigate his liability by justifying his action with respect to specific individuals.

Typically, the Department has to develop a statistical basis for its claim of discrimination, since very few employers are going to make overt statements establishing that age was a factor in determining which employees to hire or fire. Some statistical cases are easy -- reflecting an obvious exclusion of older workers from the workforce or from a particular job. Other statistical cases are more subtle and require some rather sophisticated analysis.

The development of meaningful statistics is essential to the successful prosecution of the large pattern and practice cases and this is the kind of case that we intend to develop more of. This does not mean that we will not continue to bring cases involving a single employee. We will. At the same time we must concentrate our efforts on those cases which will have the greatest impact on the community and which will establish precedent for the important legal issues; we must, if you will get more bang for the buck. This means a judicious selection of cases. It also means a continuing effort on our part to upgrade and maintain the skills of our legal and investigative staffs. In this connection, I have instituted a comprehensive training program for all new attorneys in the Solicitor's Office and have created counsel positions in the field to handle the age cases and other complex litigation. Similar efforts have been made by the Wage and Hour Administration.

Mr. RANDALL. Start the clock, please, under the 5-minute rule.

Mr. James, you have been about as good a witness as you were a football star. You have given us a good rundown here of what you are doing and with all of the care and caution that we had to exercise yesterday in our briefing, you have brought it out for the record here in what we would say in the Armed Services Committee, in a sanitized or a clean version.

Anyway, I want to ask you a few questions. I was interested in your approach about this educational process on the radio, TV, and in posters.

In the first place, when you started back down the line, let's see, the act was passed in 1967. I don't think it had an effective date until 1969?

Mr. McGOWAN. June 1968.

Mr. RANDALL. All right, so we have had it since then. Your first shot was to let everybody know that the act had been passed, and so you went out and you had what you call a massive education effort.

One of the questions of our colleague from the State of Washington which was submitted earlier and which the reporters will put in an appropriate place near the end of this hearing this morning, touches on this point and we are going to repeat it. You say along the way here that you are changing the content of your posters and you are telling them all about some of the things that are going on.

When you refer to the 2-year statutory period, I assume you are talking about the statute of limitations of some kind? There are a lot of things that are being done here that are good. I am sure you are not going to need anything like this to get you any more business.

You have pointed out how much business you are getting, but I wonder if along the line someplace—you haven't had this massive education since you started. Is that right? That's your first time around?

Mr. JAMES. That is correct, Mr. Chairman.

Mr. RANDALL. Tell us then what are you doing as an ongoing program of education.

Mr. JAMES. Mr. Chairman, we are not going to have the same kind of massive campaign we had originally, but we think there is some room for improvement or a rejuvenation of other informational programs. We plan to do that.

We are going to rewrite our antidiscrimination pamphlet. We are going to meet with our informational people because we feel that the kind of film, for example, that Mr. Drucker prepared for the case you talked about yesterday.

As you recall, Mr. Chairman, that film which details persons over 50 years of age who, in fact, are operating high performance aircraft was prepared for trial purposes, but we think that that kind of a film, in terms of destroying the myths about the inability of people simply because of age to do certain kinds of jobs and tasks is the kind of film which should not be just disseminated or shown at a trial.

That kind of film should also be used by the Department for educational purposes, and we are—Mr. McGowan, who has the primary responsibility for the day-to-day coordination of this particular program is—going to make some efforts to do that.

Mr. RANDALL. The Chair is convinced that the great majority of employers anywhere across the land may not always be happy with

some of the provisions from a profit standpoint, but I am also convinced that they have no intention of violating the law. They don't want to be law violators.

I think one of the businesses we had before us recently is probably an outstanding example of a company employing 25,000 to 30,000 employees that goes out of its way to see that there is compliance. I am not throwing any bouquets at this Company, but I am convinced you are not going to have any problems up there.

My question is: Is there anything this committee can do as a part of its mandate? If you get your new rules printed, maybe we can summarize them or boil them down a little bit. With our limited budget we might be able to have a few copies printed and given as wide a dissemination as we can. We are convinced they want to comply with the law if they know what the minimum compliance is. We will have more questions later on.

Mr. Grassley?

Mr. GRASSLEY. First of all for my own information, are you the top Administrator of the Wage and Hour Division?

Mr. JAMES. That is correct.

Mr. GRASSLEY. OK.

Mr. JAMES. At least last time I checked, at 9 o'clock this morning.

Mr. GRASSLEY. I am interested first of all in the fact that you don't have your own budget in the area of age discrimination in employment.

Is it possible to identify the amount of money that is spent on trying to solve the problem of age discrimination in employment within your division?

Mr. JAMES. Yes, sir, we do have some figures on that. In the past year, we devoted 81 man-years to age discrimination investigations. Of a total budget of \$48 million for 82 various statutes that we have responsibility for enforcement, approximately 6 percent or approximately \$2.3 million is directly allocated to ADEA enforcement activities.

That does not count the time as was detailed yesterday in terms of attorney time when we have been unable to secure voluntary compliance. The matter is referred then to the solicitor's office and there is additional expense in terms of attorney time and litigation cost. That's the figure we do not have for you.

Mr. GRASSLEY. OK, suppose you have a complaint in this area of age discrimination in employment and you supposedly used up the time that you can allocate to that problem. Then does this mean that this complaint will not be investigated?

Mr. JAMES. I'm glad you asked the question because last year we did, in fact, go over the 81 man-years; and we, in fact, utilized that time. We are going to make our best efforts to clean up the backlog. And since we do have a backlog the specialists, we hope, are going to be able to focus even more so on the age discrimination problem and, if necessary, we are going to try to use some of these techniques to reduce the backlog.

But there is a possibility we may, in fact, run over our allocated man-years for age discrimination if that is necessary.

Mr. GRASSLEY. Is the amount of allocation you have for this program in your judgment enough to do the job adequately?

Mr. JAMES. That is something that we are going to have to take a very serious look at and there are a couple of other things that impinge on this. For example, last year we felt we could have devoted more time to age discrimination, but our FLCRP, farm labor contractor registration program, was new and we are running behind on that. We had a staff of 19 nationally so we have requested, and I understand are going to receive, an additional 19 staff persons for that particular program. So they will be free to concentrate primarily on that program.

In addition, we are automating our Davis-Bacon program and hopefully that will give us some time. I think the answer is that if the complaints continue to arise, I think we are going to have to come back to the Congress to ask for some additional resources, particularly if we engage in more education and continue to receive more complaints and do not reduce the backlog.

Mr. GRASSLEY. In your opinion, you are able to adjust within your own budget or the priorities you choose in your own office to meet the increasing demands you have had placed on you in the recent years?

Mr. JAMES. I think we are going to be able to do that, but I may be wrong. I may have to come back in a year. I believe, and this is my personal judgment, that the age discrimination cases of all of the statutes that we have to enforce are the most difficult.

The wage specialists are GS-13's, and they are going to be people who focus on these cases. My preference right now would be I would rather have the older experienced smaller corps of people right now to work on these cases than to have massive new bodies that would have to be trained or have to have startup time.

I don't think that new bodies per se would help us that much. If we can, in fact, adjust some of our resources and get some more of our more experienced people into the age discrimination specialist jobs, I think that will help alleviate the problem.

Mr. RANDALL. Does the gentleman request additional time?

Mr. GRASSLEY. Yes; a few minutes more since I will have to go to Agriculture soon.

Mr. RANDALL. Please take an additional 5 minutes.

Mr. GRASSLEY. One question I always ask: Have you had any what you consider unfair pressure on you from the Office of Management and Budget to cut back your appropriation requests to such a point that you feel like one or two things: Either you aren't able to accomplish what you want to accomplish; or, against your own better judgment, you would request what you want to request, and support that request?

Mr. JAMES. I have been in the position about 32 days so the answer to your question, as it relates directly to me, is, no, I have not had any pressure.

Mr. GRASSLEY. OK, as you have heard the scuttlebutt around the office, has there been any of this under previous administrators?

Mr. JAMES. My understanding is, based on hearsay, that the Wage Hour Administration had to fight to get the additional 19 positions that we asked for in this past year's budget. But, despite pressure and fights, that in order to relieve pressure on other programs like ADEA they felt the need for a doubling of the slots in the FLCRP program.

We were successful in securing those slots despite whatever it was that said don't ask.

Mr. GRASSLEY. So you feel even though you have had to fight for what you wanted, at least you have been somewhat successful in doing it and have been heard when you have been forceful in trying to be heard?

Mr. JAMES. That's my understanding. To be honest, I don't think I personally am going to have any problems about being recalcitrant or closemouthed. I think there is a definite possibility that there is going to be a need at some point in the not-too-distant future to clearly look at this in the possible light of we need more private attorneys. We need to get more private practitioners involved in this. We need to do that to alleviate the backlog.

Despite our best efforts, we may still need additional staff persons or staff specialists in this particular area, particularly if the complaints continue to arise.

Mr. GRASSLEY. In another area, do you recommend any amendments to the Age Discrimination and Employment Act, any amendments which would require new legislation?

Mr. JAMES. Well, I would go back to the point I just made. It is my understanding that of the private suits that have been filed by laypersons that it is persons discriminated against, over two-thirds of those suits have been dismissed on what we call dilatory procedural problems.

That is, those cases were not litigated on the substance of "Is there discrimination?" They were litigated on the basis of, "Have you complied with the statute of limitations? Have you complied with deferring the State agencies?"

It is my experience, based on my short experience here, that it doesn't achieve the purpose of the act to penalize laypersons, non-lawyers, for failure to comply with procedural requirements when the act was allegedly designed to give them a remedy.

Yet, the remedy is effectively denied and you continually have set up these roadblocks which don't get at the issue of is there discrimination.

Mr. GRASSLEY. Then you are suggesting some changes in the procedural areas but not necessarily in the substance of the legislation. And by "substance," I mean for instance whether or not the ages listed in the statutes ought to be taken out completely, like the 40 to 65, whether there should be no reference to age or whether that age should be raised above 65.

Mr. JAMES. That is correct.

Mr. RANDALL. While we are on that subject, do you have an opinion on taking out references to age whatsoever?

Mr. JAMES. The Department right now does not have a position on that. In testifying before Mr. Hawkins' subcommittee last week, we did indicate that there were three studies underway which we think are going to have a significant impact in terms of understanding who is affected and in terms of how information is kept, in terms of the people who retire, how many of those people—at 65 or 60, how many of those people are interested and what the impact is.

It is my understanding that the Department will submit that interim study to the subcommittee sometime in the midsumr

that we will have a position, hopefully, by the following year at the latest. Perhaps even sooner. But my understanding is the Department has no position right now on removing the upper limits.

Mr. GRASSLEY. These studies preclude then your making even any personal comments on whether or not you would favor or your staff would favor changing those?

Mr. JAMES. I have some strong personal opinions, but I would like to make an informed decision.

I don't think I can do that at this time and here are some of the reasons why: The bill that is pending, as I indicated last week doesn't—I think if you are going to do that, and I recommend this to Mr. Hawkins, you need to hold subcommittee hearings on the fallout of the effect of eliminating the 65 age limit.

For example, there should be hearings held that would broaden that coverage. There should be hearings held on how that would impact pension plans, how does it impact social security, collective bargaining agreements, some of which negotiate in those kinds of items.

I think until we address the broader spectrum of the problems related in eliminating the age discrimination upper limit, then we are going to end up eliminating it and not be prepared to answer some of the many questions that need to be answered.

Mr. GRASSLEY. Can I ask you one budget question again that I didn't get to because I didn't think I would have time.

You rely on statisticians to prepare your groundwork for your cases in age discrimination. Is there anything in your budget for these services, and can you give some specific examples by type and cost of such services?

Mr. JAMES. The answer to your question is, yes, we are able to provide for that. Those cases, I would add are prepared out of the Solicitor's office, referred by our area offices and Mr. Drucker can give you some specificity about the kinds of experts he has used. He has, in fact, tried some age discrimination cases.

Mr. GRASSLEY. Could Mr. Drucker then answer that question for me? My question was, are the funds to secure the statistical work that you have to have to back up your cases, provided for in your budget; and can you give me specific examples by type and cost of such services?

Mr. DRUCKER. Mr. Grassley, the type of cases I have handled have dealt with the question of whether or not age is a bona fide occupational qualification.

In other words, employers have claimed in some cases that merely because of age, an employee or prospective employee cannot safely or capably do the job. In rebutting those types of contentions, I have used statisticians from the National Safety Council, and outside statisticians from such agencies as the Department of Transportation.

In those types of situations, statistics and statistical analysis is used. For example, to determine the statistical significance of whether an accident is due to chance or whether or not it is due to human error is very, very important. As far as obtaining those types of experts in preparing a case for trial, whatever I have asked for, I have gotten; and I have no complaints as far as the cooperation from the national e in securing this type of expert testimony.

Mr. GRASSLEY. This hasn't created a new need for sophistication within the statistical area dealing just with this problem, so you could draw on statisticians generally, as opposed to just experts in this area.

Mr. DRUCKER. In other types of cases that Mr. Gaswirth is interested in, the pattern and practice case, statisticians are very, very helpful in developing trends in showing prima facie cases of age discrimination and improving age discrimination cases.

Mr. Gaswirth is familiar with that. On that particular type of expertise, I think he can tell you more about it.

Mr. RANDALL. Proceed, proceed.

Mr. GASWIRTH. If I may, let me clarify one thing if I can. The Wage and Hour Division during the course of an investigation typically would not hire a private outside statistician. They would use their compliance personnel to gather and make the initial statistical overviews, if you will.

It is at the stage of a particular matter where it cannot be resolved informally through conciliation, mediation, and conference and is referred to the solicitor's office that the services of persons in the role of expert witnesses or statisticians are secured; the formal statistical studies, charts, graphs, and other demonstrative exhibits are prepared; and indepth, very scientific, and articulate types of further statistical studies are made for evidentiary purposes at trial.

Mr. DRUCKER. I would like to add something to that, in terms of the cost of getting this type of information.

My experience in trying these cases and they are very, very expensive to try, and they require the development of a lot of expertise which I had to learn from the beginning—I had statistical charts made up by statisticians that show such things as how important is subincapacitation; what is the chance of a person getting a heart attack; how does that relate to the total accident picture; and analyzing the accidents as a whole, automobile accidents, aviation accidents, what-have-you. This type of information has cost us in one case, for example, as much as \$7,000 or \$8,000 at a crack. This type of evidence, however, is necessary if we are going to vividly demonstrate that there is no relationship between age and safety. And we will continue to do this type of thing where it is necessary.

Mr. GRASSLEY. My time is up.

Mr. RANDALL. Please proceed.

Mr. GRASSLEY. This is a continuation of the question I asked you about changes in the proposed law. You have suggested and others have suggested the particular problems with the conciliation process. Would you have a specific way in which we could amend this section to make your job less difficult?

Mr. JAMES. Let me just try to answer your question briefly and then defer to Ms. Clauss.

In title VII, I know that the courts, because of the way the statute is constructed, have indicated that since EEOC is the agency with the expertise, that if they say—if they indicate, in fact, that there was conciliation, the court will not, in fact, go behind that conciliation to test the substance, or the length, or the time of that.

It is my understanding that the ADEA statute is not so constructed so that the courts are, in fact, able to require much more conciliation under ADEA than they are under title VII.

I would ask Carin to have some additional comments on that.

Ms. CLAUSS. There is a language difference between ADEA and title VII. In the age act, it says: "The Secretary shall attempt to conciliate." In title VII, I don't have the exact language with me, but it's a little bit more: "should make every effort." You may know that.

Mr. JAMES. It says: "When the conciliation is unsuccessful," and it implies in the age discrimination, "that constitutes a failure of conciliation." In the ADEA Act it is mandatory and to the extent that the court can require extensive conciliation and inquire into the context of conciliation, whereas under title VII that can't be done.

Ms. CLAUSS. Even though the language is different, you could conceivably change the language to conform it to title VII. I think we made clear in our briefing yesterday we don't object to conciliation. We are happy to conciliate every case. Our objection is to the way the courts have said we have had to conciliate. We think we are going to get a better instruction of that from the courts. We expect to find out if it will fail shortly. We have the cases in the courts in the next year. It should either get lost or won. If we fail to get it in the courts, then we want to recommend some legislation.

Mr. GRASSLEY. This is in another area, and it may not be something you can comment on, and it may not even be a problem, but I want to raise the question anyway.

Under title III of the Older Americans Act, there is a call for a study of discrimination based on age. As a result of that study, HEW is supposed to write rules and regulations, as these involve employment connected with Federal projects and within the Federal Government, too, I believe.

With HEW writing these rules and regulations, are they going to create any problems for you because you are a different department and enforcing age discrimination laws within the private sector, or am I anticipating something here that maybe would never be a problem?

It just seems to me like the more dispersed we get in the administration anti-discrimination public policy—I should have said enforcement of a public policy in this case, based on the abolition of discrimination because of age, that we are worse off, and we aren't going to have as good enforcement even in this case where HEW is going to write the rules and regulations.

The Civil Rights Commission is the one doing the study. Do you anticipate anything there, any problems for you?

Mr. JAMES. I will let Mr. McGowan answer that question. It is my understanding that there has been some coordination with HEW, and I think Frank has a better feel for that.

Mr. MCGOWAN. I would not anticipate any insurmountable problems, Congressman. We do have relationship with the other agencies involved.

In connection with this, as with many many other aspects of the problems of aging, it is a multifaceted problem. I personally have some reservations about whether a single instrument is going to resolve all of those.

So, while it may appear administratively confusing to have different agencies and different statutes involved in it, I think this is almost essential in order to get the multifaceted remedies that that kind of

problem necessitates. It is not simply a matter of age discrimination in employment between 40 and 65. The title III study, I think, goes beyond that; but, to the extent that the regulations of HEW are congruent already to ours and impact in the same areas, we will coordinate those just as we do with HEW and EEOC and the other agencies with respect to sex discrimination and the other statutes where there is concurrent jurisdiction.

Mr. GRASSLEY. Unless I read this statute wrong, it seems to me like we could find the Civil Rights Commission study which will result in rules and regulations written by HEW, and I presume enforced by HEW, running into possible conflict in the private sector with private employees who receive Federal financial assistance. We could have two agencies either attempting to do the same thing or we could have two agencies trying to accomplish the same goal and doing it in a different way. I am running into this, for instance, in the area of rural housing. HUD is trying to accomplish something. Farmer's Home is trying to accomplish something. There is even a provision they ought to work together. And, yet, they have rules and procedures that actually work against them accomplishing what they were mandated by Congress to jointly accomplish. So maybe I am anticipating something with age discrimination that I shouldn't be anticipating and maybe my question doesn't do anymore than ask you to be alerted to a potential problem.

Mr. MCGOWAN. I can assure you we will be. When the regulations are proposed, we will have discussions with them before then, hopefully, but at that point also, before they are finalized, we will look for such problems. And if we have them, we will get together with HEW and see that they are worked out.

Mr. GRASSLEY. And I would also suggest come to the Congress; don't wait until you think you can try something and accomplish it if you think the law is written badly. Come to us and tell us about it.

Ms. CLAUS. The Secretary did participate quite actively in changing the Older Americans bill as it was first introduced, and they did work with the Labor Department. We felt—I don't have a copy of it in front of me—that the final version that was enacted did not create the overlap that you are concerned about. We, too, had been initially concerned about this. It was sufficiently limited by exceptions that could co-exist.

Mr. GRASSLEY. Mr. Chairman, I want to thank you and the committee for being so generous with your time. I think this is almost the first time I have been in the Congress that I have been privileged to ask all the questions I wanted to ask.

Mr. RANDALL. That's the way it should be. We are all here in a joint effort. I can assure all that there has never been anything political about this committee, but bipartisan. We have tried to make it democratic with a small "d" and the Chair has never made any effort to monopolize the questions.

We are glad for your presence and I want to tell you there is no more interested or sincere member of this subcommittee than Mr. Grassley.

Mr. GRASSLEY. Thank you.

Mr. RANDALL. Does the gentleman from New York wish to be recognized at this time, or would you like some further time?

Mr. DOWNEY. The gentleman would like to familiarize himself with the questions.

Mr. RANDALL. All right.

We will proceed. Start the clock.

Well, we will get back on the track of where we were a moment ago here, Mr. James. You said that your first target, not necessarily your first target, but when the act was first implemented, that the target was illegal advertising, discriminatory advertising, saying that here we have to have workers 35 to 40, not over 40. We see it every day in the papers. If you have any doubt about it, look in the New York Times, page after page after page every Sunday, or any of the other papers. The Philadelphia paper, the Baltimore Sun, Chicago Tribune.

Mr. JAMES. Mr. Chairman, if it's not been done directly, it's been done by implication by photographs which indicate and picture young people consistently. So we accept that that is still a problem.

Mr. RANDALL. You said it was your first target. What I am trying to ask you is do you still believe it's a target?

Mr. JAMES. Yes, sir.

Mr. RANDALL. And you go on now down there and go so far and it gets so bad that sooner or later you get a restraining order or injunction. You say you found 8,000 discriminatory ads and you said in 60 days you found them.

You monitored daily papers across the United States, and I suspect that is a pretty good measure for 1971. There may be more than that now.

You say the problem has not been eliminated. When was the last time you got an injunction? Any of you legal folks know?

Ms. CLAUS. Oh, we get injunctions on illegal advertising on the average of maybe one every 3 weeks.

Mr. RANDALL. Good. I mean, I am sure that—

Mr. JAMES. Mr. Chairman, could Ms. Clauss discuss that Fourth Circuit case?

Mr. RANDALL. Surely.

Ms. CLAUS. We recently had some litigation that went up to the Court of Appeals on illegal advertising involving ads that did not specifically say 22 to 24 or some age limit of that sort. It talked about June grads, girls and boys, junior executives, secretary for young, dynamic businessman, age 30, describing the businessman. And we did get an excellent decision from the Fourth Circuit.

Mr. RANDALL. Where is that?

Ms. CLAUS. That's down in Richmond, Va. Holding that regardless of the intent of the employer in printing such ads, the effect is to discourage older workers from applying. And the court found in most of these ads that was the effect, and that is a violation of the act.

Mr. RANDALL. Well, if you are getting one every 3 weeks, you are on top of it apparently.

In other words, word gets around, I assume. What was the Fourth Circuit decision? What specifically does it hold?

Ms. CLAUS. It held that perhaps 50 or 60 ads that they itemize in the appendix were illegal. We can provide that case.

Mr. RANDALL. Of course, I hope you will.

That should put the word out at least in the southern part of the United States that there is a law that covers this.

Mr. DRUCKER. I would like to comment further about the use of ads. The use of discriminatory ads goes to the heart of the Discrimination Employment Act.

We have to look at the use of blind ads where we have to track down who the employer is. We had a judgment recently in Chicago against a used car agency. The employer continued to violate the act through the use of blind ads. We brought a contempt action and obtained a sizable compensatory fine by the court.

That was publicized. That type of action, vigorous type of action, goes a long way toward eliminating that discrimination in advertising.

Mr. RANDALL. The gentleman from New York?

Mr. DOWNEY. Thank you. The gentleman from New York will be brief.

Mr. RANDALL. Let the record show that the gentleman from New York has been at the Armed Services Committee. We are confronted with the principle of physics that you can't be in two places at the same time.

Mr. DOWNEY. Mr. Drucker, I am concerned about the fact that yesterday Mr. Almerico mentioned that there were some real problems with the BFOQ exceptions. In many cases it was completely ineffective. As an attorney, what impact do you think it would have on the law if we just eliminated it?

Mr. DRUCKER. I think there may be some situations possibly where age is a BFOQ, but certainly not for medical reasons, not based on the capability of an employee or prospective employee to perform.

I would like to advise you that the American Medical Association in December 1974 has taken the position that age has nothing to do with the capability of a person to perform capably on the job.

This is the type of message that should go across the country. There are a lot of myths about aging by well-intentioned people. I would like to go on. For example, one of the benefits of the space program is that in preparing some of the cases I have, I have dealt with NASA. Very well-intentioned persons completely misunderstand the whole process of aging. For example, when Alan Shepard went to the Moon at age 47, doctors sent scores of letters to NASA saying you can't send that man to the Moon. He is going to die at launch because they did not understand the aging process. This is true with employers. They are saturated with the idea that if you are over 30, you have had it. If you are over 40, rigor mortis sets in. There is no objective medical basis that prevents any individual over 40 from being hired on the job or employed on the job.

Mr. DOWNEY. Certainly here in Congress we have learned, that after you reach the age of over 40, you can still be productive. Many of our colleagues—

[Laughter.]

Mr. RANDALL. There is a constitutional limitation on age. You must be at least 25.

Mr. DOWNEY. That was my second question. You have done work with pilots.

Mr. DRUCKER. I don't want to discuss pending cases, but the type of matter that I have handled, in occupations that the public associates with constant stress, with performing complex tasks, and with learning new tasks—these myths of age dissolve.

For example, NASA has put on individuals at the age of 40 who have never flown high-performance aircraft and trained them to fly aircraft; 7,000 pilots of commercial airlines who regularly flew passengers all over this country are over 50. Those pilots had to learn to convert from prop aircraft to jet aircraft over the age of 40, and they did so.

So these myths that an individual over 40 can't learn or perform complex tasks, these are the things that have to be dispelled.

Mr. DOWNEY. You said the words: "Should go out." In particular, what about the elimination of the BFOQ, legally? What sorts of problems—before you answer the question, my time is running out.

Mr. RANDALL. You will get an additional 5 minutes.

Mr. DOWNEY. Fine.

The BFOQ requirement is a legal matter. I don't question you at all, sir, that the word should go out that older people can remain in their jobs and probably perform more effectively than younger people, but I am concerned here with the legal requirements of the act. As Mr. Almerico suggested yesterday, this BFOQ provision is a problem. Legally, how do we feel with it?

Mr. DRUCKER. We have problems pending in the court. My view is the core of discrimination occurs in the 40-to-60 bracket. That is what Congress intended. We may be creating more problems by raising the limit. We will have to see how it is. If the courts continue the way they are doing, we could have some real problems; and in the future we may have to come back to Congress.

Ms. CLAUSS. Congressman Downey, could I just add to that? I think this committee would have a difficult time convincing Congress to take the exception out completely as it exists in title VII. Even in our own regulations we recognize that a movie theater studio company, if they were trying to hire an actress to portray Eleanor Roosevelt when she was 16, could certainly be justified in not hiring somebody over 40. That is the kind of thing we meant. The problem is the employers are trying to extend it into a nonexistent medical area.

Mr. DOWNEY. Yesterday, if you recall, you mentioned some aspects of the law that were difficult to deal with. I think you talked about conditions of employment and terms of conditions of employment. If you could provide for us today some specific examples of where you found that to be a problem?

Mr. STEWART. As far as a problem area, specific problem areas, are concerned, it has usually happened to me at terminations. Employees are terminated, are laid off from their specific jobs, and there are available openings in other areas of the company, other departments of the company, and the employer goes outside of the company and does employ people, other people, for those particular jobs.

Now perhaps in some instances the employers have said, or in a lot of instances the employers have said, that those people or those persons in the protected age group do not possess the necessary skills to perform those particular jobs, and, therefore, he was not obligated to move those people in those particular departments, regardless of how low these particular skills were.

And additional situations, of course, occur when people are being terminated and they request to go into a poor-paying job. For example, an officeworker may request to take an assignment as a truck-driver, and the employer says: "Well, no, that job was not available to that particular individual. I didn't make that offer; that person did not possess those particular skills."

And I am wondering if privileges of employment would somehow enhance that particular individual's opportunities to move from one job to another. These are the areas that we have been concerned with.

Mr. DOWNEY. Lastly, we have felt strongly for some time that within the Department of Labor there should be a separate division of the aging to elevate its status and have a separate office at the agency. But would it make any difference if we elevated age discrimination in the Department of Labor by providing a separate office?

Mr. JAMES. I would like to respond to that, sir.

It is my judgment that I don't think that would be a good thing to do for several reasons. First: The Wage and Hour Administration has been in the business for some time, since 1938, and there are a distinguished and experienced group of cadre who have worked their way up through the ranks and that repository of experience can't be duplicated, in my judgment, with a new agency or by elevation.

Second: I think that a positive step is being taken. We are now creating 27 wage discrimination specialists. That is going to be a grade promotion, whereas many of our compliance officers are at grade 12. Some of our better people and more experienced people, in fact, apply for these jobs. Of the 82 statutes we have, ADEA and equal pay are the only 2 where we are going to have specialists actually stationed in area offices.

I think that will go a long way to impact on escalating it, because those people will have as their sole responsibility the responsibility to investigate and mediate age discrimination in employment.

Mr. DOWNEY. Mr. Chairman, I thank you for being so generous with your time.

Mr. RANDALL. Mr. Downey, thank you for returning to our calm committee.

Does the gentleman from Maryland want to seek recognition at this time?

Mr. GUDE. Mr. Chairman, I will just ask one question.

Mr. RANDALL. The question is recognized under the rules.

Mr. GUDE. Mr. James, in your testimony you stated that the allegations of discrimination are increasing yearly. In that regard, to what extent do you attribute this to the growing misconception that youth, indeed, is necessary if one is going to be a good employee or does this just reflect more public awareness of the problem and that something can be done about it?

People became aware that they now have legal grievance procedures or is the cult-of-youth idea spreading?

Mr. JAMES. My personal judgment is that I think there is a rising consciousness among the country—I think, particularly among older people about their rightful place in society, particularly in the world of work. I have seen in recent years, particularly at the national level and at the local level, growing organizational structures that are articulating the rights of older workers in America.

I think 10 years ago individuals would sort of accept it as the fact they were to be shoved off someplace. Today, I find less and less of that. I wonder if the concern by older people wasn't there, but I think to find the articulation, vocalization of this issue with people coming more and more to bear and saying: "I am not going to accept that." That, I think, is a demonstration that some people are young at the ages of 75 or 80. I think that is coming out.

Some of my colleagues might have some different opinions.

Mr. ALMERICO. I think one of the causes of increase in complaints has been due to the recent recession when there were large layoffs of hundreds of people affecting, quite often, the older age group. It is really a two-edged sword that there is the possibility of the age complaint from being laid off or, conversely, in seeking new employment to be turned down when they apply for other jobs.

So it really has a twofold effect. At least in our area we have large groups, large layoffs, that resulted in numerous complaints.

Mr. GUDE. In periods of recession, minorities tend to be discriminated against. You would call the aging a minority and the handicapped also?

Mr. ALMERICO. Quite definitely.

Mr. MCGOWAN. I would like to add one thing to that, sir.

When there is publicity in connection with some of our enforcement actions as with one on the west coast, I think, both within my office and Ms. Clauss' office, within a short period of time we received some 500 pieces of correspondence saying: "I read about that court case. I read about what happened to those people. That is what happened to me. Can you help?"

There is a tremendous amount of information spread and awareness of what the problem is and what some forms of redress are through the litigation effort and publicity we receive.

Mr. GUDE. Thank you, Mr. Chairman.

Mr. RANDALL. Mr. Gude, we are delighted you could be with us. I want to observe that it is encouraging to the Chair that in the course of the morning we have had Members that have other responsibilities, who have visited with us and have had to leave. I predict that, before we adjourn our hearing today, there will be others that will join us. Every Member of the Congress, without exception, has probably, in no instance less than two, perhaps three, and in some instances four, places, committees, or subcommittees proceeding where they are expected to be in attendance.

I know, in my own personal instance, we have at least four and in some cases more than that. So if they come and get in their questions, we appreciate it.

Back to Mr. James as we wade through the testimony here. On page 5, you speak of a new procedure in the mediation of complaints. Now you are talking about this conciliation process, I am sure, but you get down to a point there where you say:

This is an alternative to investigations in those instances where it appears that alleged violations would be limited to the complainant. In this procedure the compliance officer encourages and assists the parties to work out a mutually satisfactory solution to the alleged discrimination.

What you are talking about is a one on one. In other words, at that point you don't have to go into this practice and pattern business this statistical approach because you haven't had to file suit.

Now, at a point do any of your folks, any of the compliance people, actually sit in on the conciliation or mediation conferences, or what do you do on that?

Mr. JAMES. Yes, Mr. Chairman, on the conciliation conference, that is the presuit effort at voluntary compliance, the solicitor's office often asks the original compliance officer to sit in with him or her.

At the negotiation stage, the conciliation is handled strictly by the compliance officer. I believe there are rare exceptions in those cases where legal advice, legal counsel, is requested of our area offices and that request goes to the solicitor. I believe John Almerico yesterday alluded in his statement to the fact.

When he talked about the large case, he also cited one very small case. It was 20 hours and I would like your permission for him to expand.

Mr. RANDALL. Yes, I think we should hear from Mr. Almerico and also Ms. Clauss on this point. I want to be sure when we write the record here we know what happens. We need to clarify this procedure.

Mr. ALMERICO. Mr. Chairman, I think it is probably best that I describe how a complaint is received and investigated, and I think it will give you a better idea. I have approximately 15 compliance officers under me. I serve 14 counties with 6 million population, approximately, and have a field station in San Jose, Oakland, and Santa Rosa, Calif.

Age complaints, as all complaints we receive from different acts, either go through myself or my assistant to be examined for completeness, et cetera. In that stage, on an age complaint, we try to decide if it would be the type that we could use a one-on-one situation.

In a hiring case where someone claims that he has been denied employment on the basis of age, I try to get someone out almost immediately while the job is still open and we can do something about it; 6 months later, when the job is filled with someone else, it complicates the matter.

This part I want to bring out is that we first analyze it if it is a one-on-one situation. If the person mentions a large layoff in which many people were similarly affected, it might indicate a larger investigation should be made. On the basis of that, when I assign it to a compliance officer, I could limit it and say, "We will try to investigate this individual complainant or enlarge it to all their hiring practices in the last year or two."

Now sometimes, of course, with the limited amount of information in that complaint I can't make that thorough an analysis. There is not enough information. The compliance officer, after he talks to the complainant and elicits more information or after he opens the case and sees how broad it is, may elect to turn it into a full investigation or sometimes, vice versa. He has that flexibility.

So once it is assigned, the compliance officer begins working on the case, taking into account the statute of limitations and taking into account that he wants to work on it before the person's 180 days are up so that if we can't help the person ourselves, he still will have his right to sue individually.

Now, once a compliance officer opens the case, he collects all of the information that he thinks is necessary. It isn't always necessary to get all of the statistical information on a big case. He might just want to know the facts on one single job that this man applied for.

He would want to know the criteria they are using to fill this job, what qualifications the applicant is supposed to have. If he can show this man has all of the qualifications he is being asked for and he still wasn't interviewed, the office has a possible cause of a complaint there and maybe right then and there can resolve the matter.

In this case the number one thing would be to get the man an interview. That is the first phase because he wasn't even given an interview.

Even after the interview, of course, the firm still can make a judgment of who they are going to hire, but again on just certain qualifications. If the man still didn't get a job and it could still be shown that he didn't get it because of his age, then we really have a possibility for a second violation. But in most cases, I would say off the top of my head 85 percent of the time, it is decided by the compliance officer. If he finds a complaint, the negotiations to have it corrected is done by the compliance officer. In fact, if the compliance officer finds a violation and he can't settle it in mediation, we next go to a second level which is when I would come into the picture or my assistant. We would step into the picture and meet with the firm's officials—the compliance officer, myself or my assistant—and see if we can settle it on that level.

So there is a second attempt at mediation and then if we still have failed—and sometimes we might have two or three meetings in which additional facts are brought out and examined—then we would submit the case to our legal department to examine. They would decide on the merits of the case if it was suitable for litigation or not.

So we try every method possible to settle it right on that administrative level before litigation is considered.

Mr. RANDALL. Mr. Almerico, you have given us a very good run-down of the step by step procedures about the receipt of the complaint and is this a one to one type and so forth and the latitude and the flexibility of this question. You say then that 85 percent of the time the officer decides then whether he can settle it or not.

If he cannot, he comes to you.

After you have had two or three meetings, then we come to number three, the legal department, to see if there is to be litigation. But the act along here is pretty fuzzy you say. This is under Public Law 90-202, I guess, section 14, back on this State-Federal relationship.

Then do you feel you have complied with the act that you then go ahead with this flexibility without going to the State at all, or do you go to the State when you get out of stage three here?

Would you clarify that?

Mr. ALMERICO. Well, every time we receive a complaint, the first thing we do is acknowledge it by letter that we have received the complaint.

We also, at that time, in our office notify the complainant of these time limits, the 180 days, and the 300 days.

Mr. RANDALL. All right, the 180 days you notify the folks of. After you get the letter, you are putting another step in here. We need to make this record tight.

Mr. ALMERICO. Right, they are given an acknowledgement letter in which these time limits are pointed out to them so they know of these time limits.

Mr. RANDALL. 180 days to what?

Mr. ALMERICO. If they intend to file suit. There is a difference here. A complaint is one thing where someone comes in to us and complains about age discrimination; that is one thing.

An intent to sue is another matter. These are two separate areas. We point that out in every one of these cases because there is a great deal of misinformation.

Mr. RANDALL. Now we are getting back on the track a little bit.

Your complaint comes in and you turn around and give them the letter. You tell them about the 180 days time limit to do what now?

Mr. ALMERICO. In which they can file notification of the intent to sue. They have to notify the Secretary of the Department of Labor of their intent to sue.

Mr. RANDALL. For those who have practiced law, we will use the expression "tolls."

When does that begin to toll?

Mr. ALMERICO. From the date of the alleged violation.

Mr. RANDALL. That's why the 180 days is hard to determine. The 180 days tolls from that date. They may not come to you until later on then?

Mr. ALMERICO. That happens quite often. They sometimes might not come in until a year and a half later or more.

Mr. RANDALL. In this letter, you advise them that the 180 days may have been taken along there.

Mr. ALMERICO. Right. Of course, in States where there are similar age discrimination laws, they have the 300 days.

Mr. RANDALL. What's that again?

Mr. ALMERICO. There are 300 days allowed in States that have age discrimination laws.

Mr. RANDALL. I think it might be helpful to note that we have a 300-day limitation clause, and that is only if they have already gone to the State. They have to go to the State.

That is why we are trying to pull apart these threads and get them all to run in the same direction.

We just have to figure out this Federal-State relationship here and we have not done that yet, at least not on the record.

Mr. ALMERICO. We tell our people of the requirement if they intend to sue, to go to the State because, if they merely notify the U.S. Department of Labor and have not gone to the State, they may lose their rights to sue, especially in California, where we have lost some cases on that.

Mr. RANDALL. Ms. Clauss, perhaps you could interject yourself here and give us something we need for this record. What we are trying to do is carry forth our mandate that we look at the comprehensive problems of aging. We are trying to get a report here that is going to unsnarl some of these things a little bit.

You said States which have status—please provide us with those who have and those who do not have. Not right at this moment, but—

Ms. CLAUSS. They are in the back of our paper.

Mr. RANDALL. Off the top of your head, how many do and how many don't?

Ms. CLAUSS. Well, 43 do.

Mr. RANDALL. And seven do not. And some give the right to sue and some do not accord that right—and what is that figure?

Ms. CLAUSS. I don't have that, but I will provide it for the record.¹

Mr. RANDALL. I think according to this provision of law here, this section 14, you are all going to have to conform to it. I see the gentleman from Chicago is nodding his head. We will get around to him in just 1 minute, but please tell us who of these have, or are age discrimination status States and how many give the right to sue and how many do not.

You cannot tell us that right now, I understand.

Ms. CLAUSS. No; we will try to—the bulk of them have the right to sue. The bulk of the 43. But there are more problems than that because some have, for example, shorter statutory periods than the Federal law. Now we maintain first that the law does not require you to go to the State——

Mr. RANDALL. That is the question I am trying to develop here, and we are going to get around to it in just a minute, but I think we ought to go back to this step-by-step procedure that Mr. Almerico was developing.

Most have the right to sue, but a shorter statute of limitations is in force.

Ms. CLAUSS. That is right. Well, I mean not most. Most actually have the same, but there are a number that have 90 days instead of the 180 days. New York has a year, 365 days.

Mr. RANDALL. All right. Now, Mr. Almerico, you were doing real well on your step-by-step procedure and we were down to the dividing line between the complaint being one thing and the intent to sue another. When we get to the intent to sue you have to get 180 days. You still have not made it clear, at least for the Chair, what you have done to comply with section 14 entitled "Federal-State Relationship."

In our zeal to protect States rights—and it is quite a popular thing with revenue sharing and all this business—somebody has written into the law here that Ms. Clauss has said that she does not necessarily agree with the interpretation, but here is what it says:

Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory practices on the account of age except that upon commencement of action under this section such action shall supersede State action.

Now, do you go talk to the State, find out if they filed or ask this man whether he has gone to the State?

Mr. ALMERICO. Absolutely.

Mr. RANDALL. All right, just go down this line right now, if you would.

Mr. ALMERICO. We notify the person who put in the intent to sue to go to the State and file with them.

Mr. RANDALL. You advise them to do that.

Mr. ALMERICO. Absolutely.

Mr. RANDALL. In order to comply with this.

Mr. ALMERICO. Yes, absolutely.

Mr. RANDALL. All right.

What if he doesn't do it?

¹ The data was not received.

Mr. ALMERICO. We don't follow through if he does not do it. We notify him to do it, though.

Mr. RANDALL. You tell him it is his funeral.

Mr. ALMERICO. We tell him that if he does not do it, the possibility is very real that his lawsuit will not be allowed to stand.

Ms. CLAUSS. Mr. Chairman, let me clarify one thing.

In section 14, even if you read it the way the third circuit reads it, the requirement to go to the State is only once you decide to sue.

If you intend to resolve the matter the way our CO's usually do without going to the courts, there is no requirement to go to the State. It talks in terms of you won't institute a Federal action.

Mr. RANDALL. You have been exceedingly helpful.

You note the third circuit reads it—how did it read that?

Ms. CLAUSS. The third circuit said if you do institute suit you can't file a suit unless you have first gone to the State.

Mr. RANDALL. All right.

Ms. CLAUSS. So what our compliance officer was telling the complainants, he says: "As long as your complaint refers to an act that took place within 2 years"—

Mr. RANDALL. Here we are now. Here we are now on Mr. James' testimony right here. What is the 2 years?

Ms. CLAUSS. That is the basic statute of limitations.

Mr. RANDALL. On any kind of an unfair practice involving discrimination?

Ms. CLAUSS. Right. The Secretary can sue any time during that period. In some cases, we can go up to 3 years, depending upon the facts.

Mr. RANDALL. What is the exception?

Ms. CLAUSS. If it is willful. We have a broad interpretation of willful.

Mr. RANDALL. It is not in the act. Do you have some court decision on that?

Ms. CLAUSS. The act incorporates section 6 of the Portal Act, which has the statute of limitations for this act and all others that we enforce in the wage area. It says: "If the violation is willful."

Mr. RANDALL. It incorporates by reference the old portal, door to door?

Mr. ALMERICO. In section 7(a).

Ms. CLAUSS. Mr. Almerico is going to the complainants and he is telling them: "Look, if we decide we can handle your complaint because it is meritorious, we can do it up to 2 years. But if we should decide not to take your case, and we do not know yet whether we will or will not, we want to warn you now that you should preserve your own right to sue. You cannot wait 2 years. You have to do a few things now. You can meet your requirements now and then later decide not to sue if you are ever going to sue."

Mr. RANDALL. You do that in writing?

Ms. CLAUSS. Mr. Almerico does.

Mr. RANDALL. And that is why it is so important that Mr. Almerico and all the others get busy right now and have a compliance officer at the lowest level move in.

Ms. CLAUSS. That is right and that is the form letter that Mr. James has directed to be revised because it is not quite as clear as I have

just tried to state it. We send a pamphlet and we refer them to a page in the pamphlet. It is like filling out the Federal income tax return, although it is not nearly that bad. But we want to simply file it and even have some suggested letters that they can use with the simplest explanation, so that someone even without a great deal of education—

Mr. RANDALL. Ms. Clauss, do you think you could furnish us a copy of the old form letter and a copy of the revised form letter?

Ms. CLAUSS. We will be happy to do that.

Mr. RANDALL. We would hope that it might be incorporated into the record at this point while we are discussing it. We will hold the record open until such time as you can get that to us.¹

We are making a little progress in this I think. We are down now to the point that nothing can happen if the time of the complaint is 2 years old. We are up to the willful that you say can be stretched to 3 years. If we can just underscore and emphasize again the interpretation of the third circuit. Where is that?

Ms. CLAUSS. In Philadelphia.

Mr. RANDALL. Over in the Northeast, yes. They have held that there is a guiding line between the question of the State relationship and it applies only in those instances where there is a suit contemplated. You may proceed with this conciliation, mediation, and all of these other things, one on one, and all the rest without reference to the State until the part where you get ready to sue.

Ms. CLAUSS. Yes.

Mr. RANDALL. All right.

Ms. CLAUSS. Now, one thing we do in our large cases, Mr. Chairman, that the Secretary is preparing for suit, is to send out letters to all the affected State areas and say we are investigating. We did this in the Chessie System where we filed suit 1 year ago.

Before filing suit, we contacted all the States because many States were involved and said that we have this investigation. We asked: Were they interested in joining us? Did they have any investigations? We then asked them to indicate their intention in the letter back to us. They all wrote back to us and said that as long as we had gotten into it, they would not divert their resource to that. Whatever authority they had, they would turn over to us.

Mr. RANDALL. They are very well satisfied as long as you are carrying the ball.

Ms. CLAUSS. That is right.

Mr. RANDALL. How do you be sure. Do you send them a registered letter? You want to be sure they comply. Do you send them a registered letter? You cannot rely on the mails any more; you know that.

Ms. CLAUSS. That is handled by our regional solicitors. They do follow up on the letter. I do not know if they send it registered or certified, but they follow up as a procedural response. Just as we do in our conciliation, we are not going to take any chance until we get the positions clarified in court.

Mr. RANDALL. Mr. Gude, are you ready for more questions? I have a lot more here if you want to come in for a while.

information has not been received.

Mr. GUDE. Just a couple. I was wondering, to what extent do you have groups in the private sector that voluntarily pick up this theme of working against discrimination against the aging, or is it an arm-twisting practice. But have there been groups that have seized on this besides the specific lobby groups that you mentioned. I am talking about groups which generally represent large segments in the population but are not age oriented in their profile.

Mr. JAMES. Mr. Gude, my experiences have been limited. I would ask Mr. McGowan or Ms. Clauss to deal with that question. I know there has been some private litigation by private organizations. I know our national office has been in touch with some groups.

Mr. GUDE. Church groups, for example?

Mr. MCGOWAN. The American Legion, for one, which is not necessarily age oriented; the National Council on the Aging; the retired associations. All of the aging groups have been active in disseminating our literature and familiarizing their local people with the requirements and protections of the law. We also have a considerable amount of interest in the business community. I meet several times a year with several of the equal employment opportunities chiefs of some of the top 50 firms in the country in which it is an off-the-record round-table type of discussion about their problems and our problems and how best we can work together to resolve those problems.

Locally, we have a regular responsibility on the part of our local offices to keep in touch with all groups that may be interested. We make many visits and speeches to school groups of all kinds from grade school through the universities and with chambers of commerce and any place we can get an audience. We initiate many of these and we have increasingly a number of requests for this kind of participation and dissemination of information and that kind of thing.

Ms. CLAUSS. Well, the Practising Law Institute conducts two major courses, one in New York, one in San Francisco, every year which has age as one of its key topics. The BNA, Bureau of National Affairs, and Federal Bar Association had several workshops, 2- and 3-day workshops including age. The American Bar Association has had similar programs. Then every large association, almost, at their annual meeting has had some discussion of age. The American Personnel Association, the American Insurance Association, and I am sure there are many others. Wage/Hour does more of this than we do. The ACLU has participated in some of the age cases. The AMA has been very interested in our BFOQ cases, for example the *Greyhound* case.

Mr. MCGOWAN. Our annual report which has just last week been sent up and we now have printed copies sent not only to the Congress but is distributed to some 1,100 libraries as a regular distribution. We also have in our own offices a number of mailing lists of people here who are interested in any kind of information about the law.

Mr. GUDE. What about unions?

Mr. MCGOWAN. Yes.

Mr. GUDE. Are they active participants in educating their members?

Mr. MCGOWAN. Yes; and again with unions as with business or any other group they vary in their concern or awareness of how this might impact on them. I really do not know of any segment that is not becoming increasingly concerned and increasingly interested in

getting help to themselves with regard to the matter of aging because if we do not do anything else, we are going to all get older. I think increasingly people are becoming aware of that fact whatever their particular parochial interests may be.

Mr. GUDE. I was wondering to what extent the education program was a convincing one to the extent an employer or a union actually realized that this was really in the best interests of the company not to discriminate against the older workers.

Are they just giving lip service to the concept or do they really believe the company is better off by not discriminating and encouraging the employment of people of all ages?

Mr. MCGOWAN. Sir, I think that view is becoming increasingly a matter of conviction. As Mr. Drucker pointed out, with that are myths about the capabilities of older workers. Their actions are based on these kinds of myths. This is a job that we are attacking but one of the difficult parts about discrimination is that few people conscientiously discriminate. They have some other rational base for their actions when, in fact, they do discriminate. It is just their perception is not that. This is where the myths are the problem.

Mr. GUDE. What I am asking is to what extent is the education program based on fact and logic which would appeal to the businessman rather than an emotional appeal which is partly due to the popular misconception "we are all growing old and, good grief, we want a place. We want to continue working and be part of society." There is a certain amount of emotional appeal in the fact that the older employees should not be discriminated against, but what about illustrations of this statistically and by work performance? This could have a tremendous appeal to the business community.

Mr. MCGOWAN. This is the kind of effort that we intend to increase to show them that rational base. Another part of our educational effort is to show them the costliness of noncompliance. I do not think that can be underrated because most of the business person's decisions from day to day have to be made on what it costs and what the profit is. Publicity about the costliness of noncompliance when you get caught, in addition to the general things about the benefits of the older worker and so on. We also use that.

Ms. CLAUS. Our efforts to date have been what the law is, what it requires and what we are going to do to you if you do not obey. What Mr. James has said earlier this morning, we are convinced now we are going to have to redirect this educational effort. We are going to have to show movies of older workers doing things that the average person has no idea that they are capable of doing.

Holding the kinds of awakening sessions that the women's movement has been holding on what women can do in nontraditional jobs is something we are going to have to start.

Mr. GUDE. To what extent are your efforts directed to the law schools as far as involving them in the unusual type of litigation that this work involves and increasing their awareness. Is this a productive area?

Ms. CLAUS. Well, we lecture at the law schools but we have not tied into the funded programs that the law schools run where you get the law students to do your legal work, at least for some of the local pro bono law firms on the field of age.

They are doing it in race and sex but not in age. This is something we also should look into and we have not done so.

Mr. GUDÉ. I should think that would be very productive.

Ms. CLAUSS. It is an excellent aid, yes.

Mr. GUDÉ. Thank you very much, Mr. Chairman.

Mr. RANDALL. Thank you, Mr. Gude.

The Chair wants to commend Mr. James for about as good a statistical rundown of what you have done. When you talk about, since the act's effective date we have initiated over 35,000 age discrimination actions involving 34,000 persons with monetary damages of \$22 million to 8,000 individuals. Over \$7 million in lost wages has been restored to 2,000 persons. We have also secured employment, re-employment, promotions, or the restoration of retirement and other benefits for some 15,000 persons. That last figure pertains to 3 years and it is the 3 years you kept these figures and I hope you are going to continue to keep them.

Mr. JAMES. Yes, sir, we are.

Mr. RANDALL. I was impressed by the fact that in the 3½ years which I assume was the same as the 3½ years you were speaking about the records of this employment and reemployment, you estimate there has been 163,000 job opportunities that have been previously closed to those over 40 that have been reopened. That should argue for the fact that you are doing a few things right down there.

I assume these figures are accurate and we have no reason to, in any way, question them.

Back to the questions that Mr. Gude was asking a moment ago, you have agreed to provide us or said you would provide us the old form and the new form. Could you, Mr. James, just as well or any of the rest of you, give us a copy of the old poster that you have? We will try to reduce it down maybe to put it some place where we can use it and then a copy of your new poster that you said you were preparing. Put it in the plans to show the change. You yourself said a moment ago you thought you were turning away from all the organizations we have. Up to now you said the emphasis has been factual, what the act provides and what you are to do. You said we are going to turn away and show movies. I might ask what else are you going to show and do?

Ms. CLAUSS. This is something that Mr. James is just beginning to take up with our public relations people, but I know what we have done in the field of sex discrimination has been very effective.

Mr. RANDALL. I know that you all have other commitments this afternoon and this is the first call of the House. We are going to have to go over there in a few minutes. Now that we are in the post meridian by about 15 minutes, the Chair wishes to put on the record very clearly and plainly that we believe you are doing a lot of things right down there and I congratulate you on holding up your hand as you did yesterday and saying, "Well, we will let you know if we need some more money and some more help and while you disclaimed that you did yesterday, I made a notation maybe you do need more help because you have said that in 6 months you have gone up with the accelerating number of cases you are having, not arithmetically but almost geometrically.

You have gone from 1973 with your numbers up to 1974 which was quite substantial and so maybe you are going to have to have some

additional help. I cannot add any more except to say that we believe we have our money's worth to bring in the four gentlemen from the four corners of the United States and we will have an opportunity for you folks to come here to Washington again. I guess a week from today we will have Willard Wirtz, the former Secretary come here to testify.

The staff director of this subcommittee has some questions that if you would bear with us as they ring the second round at least get the questions to you and those questions will be inserted in the record just prior to these last comments by the Chair.¹

They have to do with the area of inquiry we alluded to yesterday. We said we are going to doggedly and determinedly try to figure out what has been the authorization, what has been the appropriation. What has been spent and after you have spent it, how much can you save? If you can, we are going to try to get those figures out regarding what has been the administrative cost and how much has actually been a benefit of some of these things that you have told us this morning, some of the lost wages that you have recovered, some of the restoration; try to say what percentage of these is administrative and what has actually benefited the aging. On a final note, we are grateful for the appearance of all of you and I would be well satisfied as chairman of the full committee as well as chairman of the subcommittee if all of the hearings are as productive as this one.

The gentleman from the State of Washington has submitted five questions that the witnesses can respond to at the appropriate point. In any event be certain that Mr. Bonker receives the answers and also a copy for our staff first.² The questions are:

Would it be possible for the Department of Labor to produce a brochure dispelling the myths about older workers and mail them to the establishments covered by ADEA? How much would that cost? How long would it take?

Two: What do you think the Government can do to help employers comply with the age discrimination laws?

Three: How do the federal agencies cooperate in handling discrimination cases. Is the complaint ever shifted from one agency to another agency? What would happen if there is a multiple discrimination case, that is race, age, and sex and how would this be handled?

Four: We hear so many complaints from private industry about the expense and difficulty of maintaining records to satisfy all of the Federal recordkeeping requirements. What records do you require employers to maintain? Is there any way to simplify or coordinate forms to provide the information you require?

Five: Can you enumerate for us, Ms. Clauss, the reasons that you have encountered for age discrimination. For my own part I think that often older employees are fired simply because they are more expensive since they are usually at the top levels or pay scales. Has that been your experience?

Well, those are the questions that I thought we would get into the record and get out of the way.

The subcommittee will stand adjourned subject to the call of the Chair.

[Whereupon, at 12:05 p.m., Wednesday, February 18, 1976, the subcommittee adjourned, to reconvene at the call of the Chair.]

¹ Response received too late for inclusion in this publication. Questions and answers retained in committee's files.

² No response received.

IMPACT OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

WEDNESDAY, FEBRUARY 25, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RETIREMENT INCOME AND EMPLOYMENT,
SELECT COMMITTEE ON AGING,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2257, Rayburn House Office Building, Hon. Wm. J. Randall (chairman of the committee and the subcommittee) presiding.

Subcommittee members present: Representatives Wm. J. Randall of Missouri, Michael T. Blouin of Iowa, Don Bonker of Washington, and Gilbert Gude of Maryland.

Mr. RANDALL. The Subcommittee on Retirement Income and Employment of the Select Committee on Aging will come to order.

The subcommittee has been engaged now for a matter of weeks in a review of employment problems and needs of older workers. Our initial focal point has been consideration of ADEA, the Age Discrimination in Employment Act of 1967. We have heard from the private sector and the Department of Labor personnel who are charged with the enforcement of the provisions of this act.

I believe these hearings have been helpful in our efforts to examine what many people consider one of the major barriers to employment for older workers and that is age discrimination.

From the hearings so far I would have to say that those working to enforce ADEA are doing a yeoman's job. They are having an impact on this matter of age discrimination.

Of concern to me, however, is the view which is shared by the Department of Labor personnel. We are only touching the tip, the very tip of the age discrimination iceberg.

A number of other issues related to older workers have been, and will continue to be, reviewed in our examination of this general topic. The subject of arbitrary as against flexible retirement is of significant importance to older workers themselves, and to the retirement income programs, including social security.

The availability and benefit of employment programs for older workers raises a number of questions and concerns that warrant careful review, such as second or third career training for older workers, the particular problems of minority older workers, older workers in CETA, and programs specifically designed for the older workers.

Today we are honored and pleased to have as a witness one who is not only deeply aware of the problems of older workers, but is also committed to alleviating these problems. I am sure that Willard

Wirtz needs little introduction to any of us here on Capitol Hill. He was Secretary of Labor under both President Kennedy and President Johnson, during which time forward steps were taken for older workers, including Operation Mainstream and the passage of the Age Discrimination in Employment Act.

Since leaving the Department of Labor, he has continued to explore problems of employment and training and to propose constructive, innovative solutions to these problems. I am sure that he can provide us this morning with the historical framework for our hearings, as well as an evaluation of past efforts and a proposal for future ones to meet the employment needs of older workers.

I am pleased, sir, that you are able to be with us and share your experience. Do you have a prepared statement?

STATEMENT OF WILLARD WIRTZ, FORMER SECRETARY OF LABOR

Mr. WIRTZ. I do, Mr. Chairman. With your permission, I should be very glad simply to ask that it be made a part of the record and then to summarize it briefly and then proceed with whatever particular questions you may have.

Mr. RANDALL. This statement in its entirety will be included at the point following the introduction of the Secretary. Is there objection?

Hearing none, it is so ordered.

[The prepared statement of Willard Wirtz follows:]

STATEMENT OF WILLARD WIRTZ
BEFORE THE
SUBCOMMITTEE ON RETIREMENT INCOME AND EMPLOYMENT
OF THE
HOUSE SELECT COMMITTEE ON AGING

February 25, 1976

Mr. Chairman and Members of the Subcommittee:

You have asked that I testify regarding "the accomplishments and failures of the Age Discrimination in Employment Act of 1967 and ... the Federal Government's response to the employment problems and needs of the older worker." Since others are clearly more competent to evaluate the detailed record of the administration of the 1967 legislation, I hope it will serve the Subcommittee's purpose if I refer rather to the broader principle that Act incorporated and to what seem to me the necessary further applications of that principle today.

From 1935 to about 1965, our national policy regarding ourselves as older people was directed entirely to the idea of Security.

In 1965 -- with the passage of the Older Americans Act, the amendments to the Economic Opportunity Act, and the proposal to the Congress of what was to become the Age Discrimination in Employment Act of 1967 (ADEA) -- there emerged the recognition of a second dimension of old-age policy: relating to Opportunity.

The two objectives are complementary. Most of the opportunities provided by the 1965-67 legislation, including those resulting from the prohibition of discrimination, contribute to Security. But Opportunity obviously includes the important additional element of contribution and meaningfulness.

Although the provisions for Security as such are by no means yet complete, there seems special reason to emphasize right now the Opportunity dimension. For the prospect is emerging that with the growing concern in this country about long-range employment we will not only lessen our insistence on meaningful opportunity for older people but actually curtail it -- and enlarge other forms of security as a kind of trade-off. More bluntly, there seem to me clear signs that we are moving toward preserving a pretense of acceptable employment figures -- statistics! -- by putting more and more people with more and more competence and capacity out to pasture earlier and earlier. If this is so, it is a cruel form of national self-deceit.

The figures which would confirm or allay this concern are not available. This Subcommittee has been previously advised of the shortcomings of the

standard statistics when it comes to measuring the employment and unemployment of older people, those 55 to 65, and particularly those over 65. They are critically deficient and I think misleading.

The report in a private poll conducted in 1974 -- to the effect that 3 out of 10 people 65 and over who are not working would like to be -- is obviously mushy; but it comes too close to our strong sense of this situation to be disregarded.

Part of the reason for enacting the ADEA was the advice from the Secretary of Labor to the Congress in 1965 that an estimated "million man-years of productive time are unused each year because of unemployment of workers over 45; and vastly greater numbers are lost because of forced, compulsory, or automatic retirement." Today, eleven years later, I wouldn't talk about man-hours; and this is important because this problem is emerging increasingly as involving women fully as much as men. The rest of it is that all that I can find out about this situation indicates that this lost productive time figure is much higher today than it was then, and is rising rapidly.

Section 5 of the ADEA of 1967 directs the Secretary of Labor to make a "study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress." Eleven years later, that report has not been made. The perennial advice to the Congress is that the matter is still being studied. I think the fuller truth is that we don't want to face these facts for fear that what they would show would be Opportunity curtailed, the employment prospects of younger and middle-aged people being bolstered up a little by moving more people out earlier.

The worst of it is that there are also signs of an increasing acceptance of this as both inevitable and all right. I disagree on both counts.

What then to do about it?

There are three propositions, long on the national agenda, that need no less attention just because they, too, have aged:

- That employment discrimination on the basis of age should be stopped;
- That arbitrary fixed age limits for mandatory retirement ought to be eliminated;
- That special work opportunities must be provided through programs such as Operation Mainstream and Senior AIDES.

A review of even part of the testimony already presented to this and other subcommittees makes me realize that there is nothing I can add -- except by way of confirmation -- to what you have already heard.

The prohibitions on age discrimination warrant more rigorous enforcement than they have so far received. The fine print in the ADEA, limiting its protection to those under 65, should be removed; what we have now is a Slightly Older Worker Age Discrimination Act.

The mandatory retirement point is as sticky as it is important. That report called for by Section 5 is the essential basis for deciding what to do here, and there isn't any excuse for not having it.

The obvious and obviously critical fact about Operation Mainstream Senior AIDES and other similar programs is that the administration of the Comprehensive Employment and Training Act and the curtailment of funding under cover of "decentralization" and "revenue sharing" means that these programs are being cut back even as the need for them increases. I feel helpless in just saying, as so many others have here, that this seems to me terribly wrong.

To be serious, however, about building Opportunity as well as Security into the last third of our lives -- or even about stopping the reduction of present opportunities for older people -- is necessarily to recognize that this cannot be effectively dealt with as a problem of old-age policy alone. To pretend that the answer to the non-use of older workers lies in giving them jobs by force of law, when this means taking those jobs from other workers and when the unemployment rate is at the 8% level, is empty forensics. The unemployment costs of a distressed economy must not be thrown disproportionately on older people -- or on any other group. There is more reason now, not less, for rigorous enforcement of the ADEA of 1967. But to be honest with this group among us, and with ourselves, is to recognize that older worker Opportunity depends in principal measure on finding a new form and meaning of growth in this country.

We have relied in the past on an economy based on that growth which is reflected in our measure of the Gross National Product; and we have accepted the technological advances which contribute to that particular kind of growth as creating, as far as human labor is concerned, more jobs than it eliminates. But our summation of this situation has left out the long range implications of the fact that while the number of jobs did increase ... until recently ... they were increasingly occupied for shorter and shorter portions of the life span. At one end, major employers are now offering "career jobs" only to people over age 20. At the other end, workers are being removed from these jobs at earlier ages, by forcing employees to retire, buying them off with more attractive retirement incomes, or by simply not admitting them back into jobs when they get dislocated from employment in recession periods.

at an earlier point progress toward rationalizing the place of work in life has become a form of denial of meaning to what is supposed to be its climax.

Today the ever-growing Gross National Product economy is simply no longer a reality. It was based on the fallacy that there would be never-ending tolerance in the world for 6% of its population consuming 40% of its primary natural resources. And technology is not today producing a net increase in jobs; to the contrary.

So where we go in a policy of providing opportunity for older people is inextricably linked to some choices that have to be made as to where we go as a society. Such a policy depends necessarily on a new concept of growth; not one that accepts stagnation, for it is simply not our nature to shrink, but one that draws much more creatively on the use of the limitless human resource, with less reliance on what we take from the earth's thin crust. A new and broadened concept of growth is going to be necessary to create the quantities of opportunities for useful roles we will need for all of us, and give us more room to deal with the admittedly difficult problem of an adequate quantity of such roles for the older population.

The constructing of a new concept of growth obviously carries beyond the province of this Subcommittee. There are elements of it, however, that emerge particularly in connection with the employment -- using that term broadly -- of older people. I only suggest a few of these briefly here:

There is obviously plenty to be done in every community in this country that older people are fully and eminently qualified to do. This includes but is by no means limited to what has traditionally been handled on a "volunteer" basis -- but without any reason for its having to be handled that way. A new concept of growth based on the fuller use of the human resource will necessarily include reappraisal of the validity of attaching such disproportionate significance to what is done in "the labor market" as we have defined it. This will properly include a reconsideration of the whole system of compensation and non-compensation.

We will eventually recognize again the value that lies in the symbiotic relationship between the old and the rest of the society, as we used to within the family. There is within the community at least as much opportunity to make use of this as there used to be within single households.

There is a thoroughly rational case to be made for developing a special training or education element to be included in the life-pattern at probably the 60-to-65 age level. The productive and service potential this would develop is immeasurable. The economics of this -- on a tough-minded cost and return analysis basis -- haven't even been explored.

New "part-time" work patterns of various kinds will inevitably develop as part of a purposive effort to fit work into a more rational life pattern instead of doing all our thinking the other way around -- or letting something called "the market" do the thinking for us. There would be eminent good sense in phasing retirement, gradually reducing an individual's working time on his or her accustomed job -- instead of preserving, simply for employer's convenience, a false concept of instant uselessness that results in wholesale human trauma.

Whatever cost elements may be involved in these or the numberless other possibilities of related kind will not be validly determined until we start doing a comprehensive accounting of the immense costs of present programs -- unemployment insurance, welfare programs, retirement arrangements, institutionalization of one kind or another -- from which no contribution whatsoever to productivity or service result.

In summary, Mr. Chairman and members of the Subcommittee:

I urge, in the light of today's economic prospects, the more rigorous enforcement and the larger support of those present programs -- including the prohibition of age discrimination in employment, and special work and service programs -- which recognize Opportunity as part of what we are trying to include in our compact with each other regarding our later years;

And that we take particular care not to try to either paper over or meet national economic exigency by shutting off older people's opportunities to find purpose and meaning in doing what they can and want to do;

But that we recognize that the only ultimately satisfactory older age employment policies will have to be based on new growth policies depending less on the conversion of limited natural resources and more on the fuller development and use of the limitless human resource -- including what is in most people after they pass those arbitrary and artificial age lines to which we currently attach out-dated importance.

An important part of any new concept of "growth" will be in creating a system that serves our humanity, with each year of life as important as any other, and a corresponding decline in our habit of adapting the human experience to service the system. The old growth concept is now faltering. We need to put something in its place. It might just as well be something better.

Mr. WIRTZ. I would say this in brief summary, Mr. Chairman and members of the subcommittee, that there are obviously others who are in a better position than I to testify about the details of the record of the administration of these various programs. So it has seemed to me that possibly I could be most helpful simply by suggesting an understanding of the principle underlying the Age Discrimination in Employment Act and the other acts and to suggest where I think the application of that principle should be extended today.

It seems to me that we have done our thinking traditionally about the problems of older age so much in terms of security that we are perhaps missing a very important part of the point. I find my own thinking clearer if I try to think in terms of opportunity as well as security. I guess I don't think that security is an adequate door prize for life. We must be thinking in terms of opportunity, too.

Historically we thought entirely about security until about 1965. Then in that year there was expression in the Congress of the recognition of this other dimension of opportunity and there were three sets of enactments then which brought it more clearly into place.

I should like to simply suggest, and then add some little supporting detail, that we get the right answers and that we also understand the present situation better if we ask what we are doing not only about security as well as older workers' concerns, but about opportunity for them.

Quite specifically, this seems to me today increasingly important because I say to you quite frankly that I expect we are today curtailing opportunity as far as older workers are concerned.

I see beyond that increasingly clear signs that we are papering over the employment-unemployment situation in this country to make the statistics on unemployment come out, even with reasonable satisfactoriness, simply by putting more and more older people out to pasture earlier and earlier. I think we are about to commit a very cruel deceit.

Ten years ago, when we were talking about the introduction of what is now the ADEA legislation, the Secretary of Labor then suggested to this Congress that in his judgment we were losing at least 1 million man-years of productivity at that point. I would have to say to you now I think that figure has gone up and it is considerably higher than it was then.

There are three familiar propositions bearing on this point. I can add very little to what I have read in the record of this subcommittee with respect to each of them, but I would like to make my position perfectly clear about it.

The first proposition is that employment discrimination on the basis of age should be stopped. I can add to that only that in my judgment at this point there is no justification for that 65-year-age limit. We debated that back and forth 10 years ago. There is division on it now. It seems to me that it is now high time to take that fine print out of the act and to extend the protection above age 65. It is an absurd, artificial, and ridiculous date.

There is a second point to which the chairman has already referred in his opening remarks about this mandatory retirement business. That is as important a problem as it is a sticky problem. We recognized that 10 years ago. In 1967 the Congress, very wisely, it seems to me, said in section 5 of ADEA that it is too hard a problem to resolve on the basis of available information and there was instruction to the Secretary of Labor to make a report to the President and to the Congress on it. That was 1967.

This is 1976. The report is not here. Each year there is a suggestion to the Congress that this matter is under study and that there are various explorations going on. I don't believe that is the whole truth.

I think the whole truth is that we know that, if that study is put in here, it will show that we are preserving opportunities for younger workers and middle-aged workers by mandatorily retiring people earlier.

That information is too important to permit my making a clear suggestion to you without knowing what it would produce. I only say that on this point it seems to me there is no excuse for that report not being here. I would hope very much that it would come forward quickly.

The third traditional point involves the Operation Mainstream and similar types of programs. As I read that record, from where I see it now, what we are doing is cutting back on those programs or at least keeping them level despite the fact that the general circumstances require their being enlarged.

I must say to you that I feel helpless in being unable to add to what has been said here so many times that I don't want to add to the monotony of it. I just think that is wrong and that those programs should be increased.

There is one other general point to be made, Mr. Chairman. I think that there is more reason than there ever has been before for enforcing vigorously the ADEA, for expanding those Operation Mainstreams and other types of programs, and for doing something about the mandatory retirement issue.

I think, Mr. Chairman and members of the committee, that we kid ourselves if we proceed on any assumption that this problem is going to be met simply by the enforcement, through the legal process, of a prohibition against discrimination when in some instances that will mean that a younger person will lose that job and when unemployment is currently at the 8 percent level. So we can talk about all of these things.

I think we have to recognize that there is not going to be an adequate old-age employment program or, indeed, an adequate employment program of any kind until we recognize that there has got to be a new concept of growth developed in this economy.

I believe it is true that the ever-growing gross national product economy simply is no longer a reality. I believe we have caught up in this country with the fact that the rest of the world is not going to tolerate our 6 percent of its population using 40 percent of its basic natural resources. And because our economy has been based on the

conversion of those raw materials which are in the very thin, life-sustaining crust of this earth, we have to find some new form of growth, some new concept of a viable economy, self-supporting.

I believe that, unless we recognize that, we kid ourselves if we hold out promises to older people or anybody else that we can meet this problem by simply enforcing some laws.

Obviously when you face up to what I think is the fact, that what we need in this country is a new growth economy based, in my judgment, on the larger development and use of the limitless human resources instead of exclusively on the basis of the conversion of natural resources, we carry the question beyond the province of this subcommittee.

I note here those several aspects of this possibility which, it seems to me, are illuminated and particularly illustrated so far as older people are concerned.

Just take one of them. There is obviously plenty in every community in this country for older people to do. That fact just can't be emphasized too strongly. That includes, but is not limited to, those things which we have traditionally treated as voluntary work of one kind or another. I expect that a growth economy based on the fuller development and use of the human resources is going to require a whole reevaluation of these distinctions that we have made in the past between volunteer and other kinds of work.

We have done all of our figuring, all of our thinking, worked out all of our economics on the basis of that human labor which goes into what we call the labor market. It is ridiculous.

Two people go to a hospital one day—one of them to collect parking fees out there in the parking lot. What that person does goes into the gross national product and is figured as part of our growth. The other person goes on into the hospital and spends all day in what we call volunteer work in that hospital. The gross national product couldn't care less.

There are so many other illustrations of that same kind that I don't need to belabor the point. I believe if we are going to find that kind of growth which will sustain the economy and will also use the human capacity, we are going to have to review our whole historical distinction between the labor market and the work which is done outside it, and that has a particular relevance to older people.

I think there is a thoroughly rational case to be made for changing our educational system to include some kind of retraining educational opportunity between ages 60 and 65. I can make a better argument for another year of free education between ages 60 and 65 than I can between ages 16 and 20. It is an absurdity that a retirement or the improvement of leisure is an unskilled occupation.

When I think of the productive capacity which is now being wasted as far as older people are concerned, I have a hard time accepting any proposition that we have reached limits of our growth. There are obviously economic questions involved whenever you get into this area. Nobody has explored the economics of something like an educational and training program for people approaching or entering the retirement period.

I am not at all sure how they would work out. I am talking about a program which, in my judgment, could be made self-sustaining all the way through.

One other illustration. I expect that in revising our thinking about our economic system and in getting a concept of growth which is not limited to the gross national product in history or in the world, and one which ties in more closely with our underlying ideals as human beings, I expect we are going to have to do some new thinking about part-time jobs of one kind or another. This has particular relevance and illustration to the older workers' situation.

There is a great deal that could be done to meet this problem by way of facing retirement in one way or another instead of proceeding on this ridiculous assumption of instant uselessness, which results in wholesale human trauma. It has no justification except the administrative conveniences of the system.

I say again that a number of these programs would present cost questions, and I realize that in practical, pragmatic, political terms, to enter that area right now presents very real difficulties.

But I would argue that, on a straight transfer-of-present-costs basis, we could do infinitely more than we are currently doing as far as the whole unemployment situation is concerned and perhaps particularly as far as the older workers' situation is concerned.

It is hard for me to understand why there hasn't been more attention to the fact that we are currently spending apparently about \$40 billion a year in this country on unemployment insurance and on other programs which are related to unemployment in one way or another.

That is not a hard figure. It is probably too low. I don't believe that we would be spending this money the way we are now if we sat down and figured out what is the most effective use of \$40 billion or, putting it the other way around, I think we had better start being clear about what our present expenditures are for all of these programs and then start thinking through how it could be better done.

Right now that \$40 billion goes completely to programs which involve no production or contribution as far as the recipients are concerned and have mighty little mention as far as those individuals are concerned.

It seems to me that there is a possibility of spending that kind of money and putting it into operations which are productive, which do contribute to the success and the vigor and to the strength of the economy and also give some meaning to the individual performance of those functions.

In very quick summary, Mr. Chairman, I have tried to suggest three points. First, that in terms of today's economic situation and tomorrow's economic prospects there seems to me more reason, not less, for tightening up on the antidiscrimination provisions and for expanding the programs which have been devised to meet this situation. I just think we have to be mighty careful that we don't throw the burden—the unemployment burden—of a distressed economy on older workers or, indeed, on any other particular group. I would speak as strongly as I can to what seems to me the necessity of a stronger enforcement and administration of these programs.

Second, I don't think we have gotten to the heart of the matter until we recognize that the improvement of the opportunities that older age presents for productive contributions to the community is probably not going to be realized until we do some new thinking about a growth economy which is based on the use of the human resources much more fully and on the natural resources less.

Third, the old growth concept seems to be faltering. It seems to me we have got to put something in its place. I suggest it might as well be something better.

Thank you.

Mr. RANDALL. Thank you very much, Mr. Secretary.

I have followed your testimony as well as I could, not being a shorthand expert, and we have jotted down a number of questions to ask you.

You mentioned losing 1 million man-years of resources per year. You said that was an old figure. You went by me a little fast. What is the year you gave that figure for?

Mr. WIRTZ. You look back with pride on some things that you did when you had a chance to do them and with regret on others. I guess I put pretty high on my pride list the report of the Secretary of Labor to the Congress in June 1965.

Mr. RANDALL. June 1965?

Mr. WIRTZ. Yes. This was a recommendation for what became the ADEA. In that report that figure was used. I should make it very clear, Mr. Chairman, that figures in this area are terribly, terribly spongy because they are all based on our traditional measurements of employment and unemployment. The basic figure there, which most people don't realize, is the participation in the labor force figure and all the figures get skewed as for as older workers are concerned because, when they don't affirmatively go out and look for a job, then they don't show up in the figures.

Mr. RANDALL. Your distinction between security and opportunity was very interesting, very enlightening and very well to make a part of the record.

I was quite startled to find that there had been a report ordered, or at least requested, back in 1967 of the Department of Labor. You said that section 5 of the ADEA act required that report to be prepared by the Department of Labor. Then I think you used the words "and kept under study." I think you used the words "that is not the truth."

You left obviously in 1968 or 1969.

Mr. WIRTZ. In January 1969.

Mr. RANDALL. Under the Nixon administration?

Mr. WIRTZ. Yes, a minute before.

Mr. RANDALL. Shortly before the train pulled out, yes.

To your knowledge that report has not yet been rendered?

Mr. WIRTZ. Let me amplify a little. That instruction was in the act in 1967. It bothered me that it had not been completed in the months before I left. It bothered me enough that on November 27, 1968, I did send as Secretary of Labor a letter to the President of the Senate, explaining what we had done so far. Interestingly enough, that whole year had been taken up at the opposite end of this age limit. We had a problem from the airline stewardesses because they were objecting to the 40-year minimum. So that was taken up.

This is really an excuse letter, but there is such a letter on November 27, 1968, saying "Sorry, we haven't gotten it up yet."

Incidentally, Mr. Chairman, I said I think it is not the full truth. I referred specifically then to the Age Discrimination in Employment Act of 1967 report which was filed by the Secretary of Labor most fully on January 31, 1975.

I have checked back. This parallels the reports which have come in throughout the intervening period. It does, as those earlier reports have done, refer to this involuntary retirement study.

My reference is to page 23 of the January 31, 1975, report. It goes on and says, "In accordance with this congressional directive, a research program to obtain the needed information was initiated several years ago. Unfortunately all of the surveys completed so far" and so on and so forth.

It refers to a study that is being made by Dr. Parnes at Ohio State University, to another one being made by the Social Security Administration, and to a couple of others. The short of it is that they say so far they just can't pull this information together.

Mr. RANDALL. That question was asked because the Chair believes that we are going to have the new Secretary before us. I would like the staff to refer back to this 1975 report.

Mr. Secretary, if you would be good enough to give us your letter. Who was Secretary of Labor when you wrote your letter?

Mr. WIRTZ. I was.

Mr. RANDALL. No, no, the one after you were out. You wrote the letter while you were in, and you wrote one after you were out.

Mr. WIRTZ. I misstated that.

[A copy of the letter follows:]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 27, 1968.

Hon. HUBERT H. HUMPHREY,
President of the Senate, Washington, D.C.

DEAR MR. PRESIDENT: I have the honor to present herewith my recommendation with respect to the appropriateness of the lower and upper age limits incorporated in the Age Discrimination in Employment Act of 1967 (P.L. 90-202).

This Act includes a requirement (Section 3(b)) that the Secretary of Labor shall recommend to the Congress not later than 6 months after the effective date of the Act (June 12, 1968) any measures he may deem desirable to change the lower or upper age limits set forth in section 12. Section 12 provides that "The prohibitions in this Act shall be limited to individuals who are at least 40 years of age but less than 65 years of age."

The legislative history indicates that the impetus for the study of the 40 to 65-year age limits provided under the Age Discrimination in Employment Act was brought about at least in part by the interest in the case of airline stewardesses. Some airlines had been requiring their stewardesses upon reaching a certain age, usually 32 to 35, to either transfer to ground jobs or resign. The stewardesses claimed and were able to support the claim that this requirement was unrelated to their abilities to perform their jobs. The House Committee report states:

"The case presented by the stewardesses reveals an apparent gross and arbitrary employment distinction based on age alone. It deserves mention again, that the only reason the committee bill does not specifically address this discrimination is in the interest of the major objective of the bill. In lieu of such provision, the committee added section 3(b), however, and expects the Secretary—pursuant to the subsection—to undertake study in this area, making whatever recommendations he deems appropriate." (House Report No. 805, October 23, 1967, p. 7.)

Additionally the Senate floor debate indicates that the report should include a determination as to whether this was a unique problem and to make recommendations for a solution. (Congressional Record, November 6, 1967, p. 31253.)

Intensive research in current literature and checks with agencies involved in discrimination problems have not disclosed any other occupational groups in which present practice results in age discrimination involving groups of workers under 40 years of age. The general counsel of the EEOC has informed us that the Commission has had no other experience with problems of age discrimination below the age of 40. It is our judgment, therefore, that the stewardess problem is unique.

The stewardess problem appears to be well on the way to solution through the issuance of a decision by the EEOC in the case of *June Dodd vs. American Airlines, Inc.* (issued August 8, 1968) and through modifications of collective bargaining agreements as they affect the employment of stewardesses. The EEOC decision in the case cited above held that the company had violated Title VII of the Civil Rights Act when it terminated the employment of a stewardess because of her age. The agreement reached on August 11, between the Transport Workers Union and American Airlines, permits the airline to continue to offer stewardesses the opportunity to transfer to ground jobs, at higher base rates, or retirement with increased severance pay upon reaching age 32. However, the stewardesses now have the additional option of continuing to fly, if they so choose.

With respect to the currently applicable 40-year lower age limit, I believe the rationale for this lower age limit, as described in the House Committee Report is very persuasive:

"Section 12 limits the prohibitions in the act to persons who are at least 40, but less than 65 years of age. The committee altered the lower age limit from 45 in the original bill to 40, in that testimony indicated this to be the

age at which age discrimination in employment becomes evident. It is also the lower age limit found in most State statutes bearing on this subject. The committee declined to further lower the age limitation, notwithstanding the highly effective and persuasive presentations made by witnesses representing airline stewardesses—some of whom are not permitted to continue as stewardesses after age 32. Although the committee recognized the significance of the problem, it was felt a further lowering of the age limit proscribed by the bill would lessen the primary objective; that is, the promotion of employment opportunities for older workers." (House Report No. 805, October 23, 1967, p. 6.)

With respect to the upper age limit of 65, many of the problems encountered appear to be related to compulsory retirement. The ADEA requires that a study be made of institutional and other arrangements giving rise to involuntary retirement. This study is now under way and will form the basis of a separate report to the Congress.

Questions have also been raised with respect to the legality of imposing upper age limits below age 65 when a safety factor is involved. This problem had been raised, at the time the legislation was enacted, with respect to rules set by regulatory agencies for public safety. Since the Act became effective, a question was raised with respect to regulations of the Federal Aviation Administration which do not permit airline pilots to engage in carrier operations, as pilots, after they reach age 60. The Department of Labor has taken the position that Federal regulatory requirements which provide for compulsory retirement without reference to an individual's actual physical condition will be recognized as constituting a bona fide occupational qualification when such conditions or qualifications are clearly imposed for the safety and convenience of the public and therefore not a violation of the spirit or letter of the ADEA.

Consideration was also given to the desirability of eliminating age limits. Of the 26 States and Puerto Rico which have laws relating to age discrimination, five set no age limits—Alaska, Hawaii, Illinois, Nebraska, and Maine. An examination of the legislative history makes clear, however, that the Federal statute was designed to do more than just bar discrimination because of age. It was designed to make clear that the hiring and promotion of the older worker must be based on ability and not on age. As Congressman Carl Perkins, Chairman of the House Committee on Education and Labor, stated:

"H.R. 13054, a bill to bar arbitrary discrimination in employment based on age, in fact is more than a bill to bar age discrimination. It is a bill to promote employment of middle aged and older persons based on their ability. We do not undertake to tackle the whole problem of age discrimination in employment in this bill, but we feel that we strike at the heart of the situation, that is, attacking discriminatory practices between ages 40 and 65 where discrimination is most prevalent. In this bill we require a clear and unequivocal statement of public policy supported by an extensive research and educational effort and backed up by civil enforcement procedures." (Congressional Record, December 4, 1967, P. H16164.)

The age limits presently included in the statute encompass approximately half of all persons 25 years of age or older and almost three-fifths of the labor force 25 years of age or older. Any broadening of the age span might limit the effectiveness of the statute in promoting the interests of the older worker. Changes in the age limits would therefore seem to be inappropriate.

This new law has only been in effect for 6 months. After the statute has been operative for a longer period, the age limits will be reexamined in the light of administrative experience.

Sincerely,

WILLARD WIRTZ,
Secretary of Labor.

Identical letter sent to Honorable John W. McCormack.

Mr. RANDALL. The gentleman from Maryland.

Mr. GUDE. Mr. Wirtz, you spoke of restructuring the thinking in our society about the utilization of our resources and our work force and, in particular, to the end that we have to look at the fact that the productivity of the worker is steadily increasing.

It seems that the incentive for the producer in society is always to make the individual worker more productive, and this continues the squeeze on the retirement group.

Mr. WIRTZ. That's right.

Mr. GUDE. Within a few years it looks as if the retirement age could be 40 or 45 if our increased productivity continues; it's a dismal outlook.

I wonder if, rather than just restructuring our thinking and trying to implement programs which would make the retirement years more productive, that this effort should begin when the worker graduates from high school or college. Some of this productive capacity should start going into adult education and retraining in the 1920's, in the 1930's, and the 1940's.

It simply won't work if the increasing productive capacity is used to lower the retirement age.

Mr. WIRTZ. I would agree totally, Mr. Gude. My reference to the part of it at the end is only because of the particular focus of this conversation.

You are dead right, it must be broader than that. Starting at the bottom end, I think we are probably no more than 18 months away now from another serious showdown as far as the young people are concerned. They are being trained right now harder and harder more and more specifically for jobs, clearly identified jobs, which aren't going to be there.

In that interim period any suggestion I would have about doing something as far as the older worker is concerned would be my own thinking extended. I think we ought to start thinking seriously in this country about the West German and French experimentation now with a two-year leave of absence for the purpose of retraining. This is during the work period for the purpose of retraining for something else.

Mr. GUDE. This is not a terminal retirement?

Mr. WIRTZ. It is not. It goes all the way through.

Mr. GUDE. The retraining starts in the early age of the citizen?

Mr. WIRTZ. It does. In the two countries, West Germany and France, it is what I would call a 2-year deferred educational opportunity. They call it something different. It can be taken at any point along the line, I think after the first 5 years or something like that.

It is for the purpose of retraining, so that when it looks as though the individual's job is about to be taken over by a machine, that individual can then take this retraining and at 75 percent of his or her earnings. It is paid for out of the unemployment insurance fund.

Mr. GUDE. It seems the psychology in this country has been to put this surplus capacity time for the worker into leisure activities. They talk about the 4-day week; I guess we will be talking about a 3-day week before long.

This seems to be a much better alternative, to look to some kind of retraining and educational activity, making the citizen more productive as he moves along as well as giving him additional leisure activity.

Mr. WIRTZ. I believe so. It might be worth it to refer to the current development in several of the Western European countries of what is quite clearly a countercyclical education and retraining program along the lines of your suggestion.

Mr. GUDE. One more question, Mr. Chairman.

Do you think that in the labor movement, the labor unions, who are really most intimately involved in promotion of any concept or change in direction, are they geared to this idea?

Mr. WIRTZ. If the answer had to be in one word, it would be "no". I guess it doesn't have to be. I would go beyond that, to say that I expect there is no question about the fact that organized labor has been more supportive and more helpful in this area than any other particular group. But it is very hard for the labor unions to concentrate their interests on this kind of thing, given the present level of unemployment.

I think it would be less than candid to say to you that I find in organized labor's approach to this problem today the kind of emphasis on the older worker's situation which I would feel is the important one.

Labor, I think, is in a situation where it is organized and the collective bargaining process is forced to move toward an earlier retirement kind of concept, which I am frank to say I think is unfortunate.

Mr. GUDE. Thank you.

Mr. RANDALL. Thank you very much.

The gentleman from Washington.

Mr. BONKER. Thank you, Mr. Chairman.

It is a privilege to have you before this committee, Mr. Wirtz.

Mr. WIRTZ. Thank you.

Mr. BONKER. In your book "The Boundless Resource," you recommend that "we make a year's free public education available to everybody after he or she reaches age 60." Are you talking about the standard adult education courses or vocational and training courses?

Mr. WIRTZ. I would go beyond that. First, the answer would be that I am not talking about the standard adult education courses. That takes just a word of amplification.

As the official surveys count it, there are about 15 million people in this country today taking one form of adult education or another. But most of it is quite peripheral. Most of it is for the purpose of developing some special interest the individual has. I don't mean to knock that. I think it is important. But it is not what we are talking about here.

What was the other thing you asked about?

Mr. BONKER. Adult education versus vocational training.

Mr. WIRTZ. Yes. What we have in mind here is closer to vocational training, but broader in this respect, that vocational seems to imply a particular traditional kind of interest. It well may be that some older people's largest satisfaction in productivity may be in a different kind of thing from what we ordinarily think of as vocational training.

Let me illustrate. I can resent the fact that I had to get to be 57, retired at that point by popular demand, before I found out it was more fun to do things with my hands than with my head. I don't make the point lightly.

It does seem to me that a great deal of this training and education could be for the purpose of developing that kind of interest.

But having now guarded my answer carefully, the point that we are proposing here would be one which comes very close to the kind of vocational education that is implied in the question, simply expanded enough to include other things than the traditional vocations, then the answer would be yes. It is meant to be a basis for making older people larger contributors to society.

Mr. BONKER. If we follow that line of reasoning, you say also in your book, "There is an increasingly fixed pattern of older workers who drift downward in their later years to lower paying and less exacting jobs."

It seems to me that if we are going to reprogram older Americans for more vocational activity, then that could represent a step downward.

Mr. WIRTZ. That is exactly why I tried to be careful about my earlier answer. You are exactly right. If it was just the traditional vocational education for the traditional vocations, I think it would have exactly the result to which you refer.

On the other hand, the prospects or the possibilities become quite different if you were, for example, to do the careful job which ought to be done of carving out those elements in present jobs which can be done by older workers, setting those apart from those which cannot be done, and then start the retraining, aim the retraining at those elements which can be done by older workers.

You are very right, and that was the reason for my caution. So that training has to be of such a nature that it just doesn't qualify them to do that little bit of the present thing which is left over.

Mr. BONKER. In Oregon they had a program a few years ago called the Green Thumb program, that involved senior citizens in landscaping activities along the Interstate Freeway. It was a very successful program.

I also notice that in the Older Americans Act, Congress added a provision which would allow Government agencies or local governments to hire senior citizens on a part-time basis for various activities.

You recommend a course that would involve senior citizens in working activity, things that are vocationally challenging and yet compete with the job market.

Mr. WIRTZ. I would look at those first and would attach special importance to them, but I do not think that they should be limited to that.

Mr. BONKER. But if we reprogram people for active competitive jobs, we are going to contribute ultimately to a higher rate of unemployment.

You mentioned a \$40 billion amount. We know through the Budget committee that for every percentage point of unemployment beyond 4½ percent we lose \$16 billion.

If we have more senior citizens going into the job market, we are going to cause eventually a greater rate of unemployment. That is

going to mean more tax revenue loss and greater payment programs, and we are back into the cycle.

Isn't there some way we can expand job opportunities which are challenging for senior citizens without competing in the job market?

Mr. WIRTZ. The considerations which you mentioned are those which have led me in my statement to say that I think any answer is almost a cruel pretense, unless it is part of the development of a new concept of economic growth in this country and, short of that, we are kidding everybody.

Mr. RANDALL. Do you wish to proceed further—go ahead.

Mr. WIRTZ. If I could amplify that answer a little further then. It seems to me, Congressman, that unless we are prepared to attach value and to find economic justification for moving into a great many more activities of one kind or another which we could identify, unless we do that, the enforcement of ADEA will (a) be dubious, (b) will be unsuccessful, and (c) will be just a kind of hoax because there won't be many more older workers put into jobs if the price is that a younger worker is removed from one.

Mr. BONKER. You stated in your book that the Social Security Administration found in a survey that one-half of the men interviewed were subject to compulsory retirement and said they do not want to stop working. Just based on my own personal observation, it seems to me that when many people reach retirement age they don't necessarily want to stop working, but they don't want to continue doing what they are doing. In other words, they want to get into some other kind of work activity. My own father and others in my family would have, after they worked for the same company for 35 years, retired, but they are not ready for retirement. It is a real dilemma. So what they do is leave the job and then go out and find some other job which ultimately becomes competitive.

The same way with retired servicemen. There are just hundreds and thousands who retire at age 39 and 40. My brother retires from the Service this weekend. We went in together. He is just ending his career, and I am starting mine. Yet he is around looking for a full-time job. I think that really places a great burden on our economy.

Mr. WIRTZ. And also on our humanity or whatever that other word is. I wish I had them but would be glad to supply you the statistics which show the shift from a previous and earlier tradition of a person staying in the same job all of his or her life to the present situation.¹ I don't have them immediately at my command, but that figure on changes in jobs—there are so many different ways of stating it—is up now around three or four changes during the life period as being par.

When we start to think about opportunity, and so on, and so forth, we are going to start thinking about second careers a good deal more than we do now. Just one other illustration.

Mr. BONKER. Do you think that is helping?

Mr. WIRTZ. Sure, sure, I do think it is. If I may give one illustration of it. I have gotten very much interested in the college administration

¹ In 1964, the Labor Department concluded that a 20 year old man will make between 6 and 7 job changes during his working lifetime. There are no more recent statistical studies.

problem. This whole tenure concept is about to stifle the small colleges, particularly for a variety of circumstances, and yet a great many teachers, of whom I used to be one, would welcome a second career which would move them into something else. So, it does seem to me there is a great potential there.

Mr. BONKER. I think it is probably healthy for the individual, but it would cause disruption for the whole system.

Mr. WIRTZ. It will be disruptive as far as the traditional gross national product economy is concerned. I find my own thinking at least stretched, if not to the point of persuasion, by Mr. Schumacker in his book, "Economics, as if People Mattered." It has an unfortunate title. He called it "Small Is Beautiful," which turns most of us off if we fancy that we are hardheaded at all.

In his development he suggests what it would take to move an economy such as ours on to a basis where we develop the concept of growth and the idea of work in terms of what people can do. And treating a chapter on budget economics, I don't sell it or even buy it all, but I have some rethinking of my own to do about what things are important and what are not and what are economically viable and what are not.

Mr. BONKER. Thank you, Mr. Wirtz.

Thank you, Mr. Chairman.

Mr. RANDALL. Thank you, Mr. Bonker.

I just suggested to the staff, Mr. Secretary that we might try to get a copy of the book and take a look at it. He said we might be able to get a copy of the book here, but it would be utterly impossible to get a copy of the book in his native State of California. It has become the new, youthful Governor Brown's sort of Bible. So, maybe we will take a look at it.

Mr. WIRTZ. Mr. Chairman, in some respects it goes beyond anything that I understand or believe, but in other respects it makes me do some rethinking.

Mr. RANDALL. Thank you.

Mr. Secretary, you gave us some alternatives. Everything seems to come in three's here. You said we can enforce ADEA and then you gave us some other alternatives. You said: "And enlarge on the volume of senior aids and operation Mainstream programs."

We are in the process, I should advise you, of asking the Subcommittee on Appropriations to increase just a little bit. We have combed the list under supplemental appropriations which will be finally marked up in about a week. We hope to have a conference with them maybe this afternoon.

We were talking about not a large figure. We are not going to be budget-busters or anything of the kind, just a few million dollars here and a few million dollars there. I think the total is somewhere in the vicinity of \$21 million for fiscal 1976.

What would you recommend in these two programs, Mr. Secretary? Do you have any recommendations? I think you said in connection with that that you thought that there should be some increased funding. Did I understand you rightly?

Mr. WIRTZ. Yes, sir.

Mr. RANDALL. By what amount? I know you are not familiar with the budget as to what the total is, but what would be a figure, in

your judgment, for a State, for instance, not one of our biggest States, but one of our average States?

Mr. WIRTZ. I believe I would do you a disservice by translating it into figures. I know that leaves me just saying more, more, more.

Mr. RANDALL. That is what we have to guard against also.

Mr. WIRTZ. Sure. But it would be a mistake for me to give you a figure.

Mr. RANDALL. In going through my notes, you made the comment that the rest of the world would no longer tolerate a nation of 6 percent in population using 40 percent of its natural resources. Then you said we must find a new concept of growth. Instead of the conversion of natural resources, I think you said the use of human resources.

Mr. WIRTZ. That is right.

Mr. RANDALL. Would you address yourself a little bit more to what you meant by that?

Mr. WIRTZ. Yes. I realize I am not on thin ice, but in a rarified atmosphere because the economics of it, I think, have not been thought through.

I have also been attracted recently by this economic theory which they call human capitalism. I seem to be testifying from limited knowledge on a number of things here. It involves, Mr. Chairman, the analysis of the extent to which the gross national product is increased by education. For example, there has been this pretty complete analysis which shows that probably some place between 20 to 25 percent of our gross national product increase is attributable to education. I would hope we could find out how much that could be enlarged.

I am persuaded that there can be an enlargement. I am assuming that we have got to have a self-sustaining economy. So, there is apparently the possibility that by more, by fuller investment of our human capacity we can increase that gross national product.

I call attention to one other thing which I think bears directly on your question, Mr. Chairman. In the year 1958, this nation became the first one in the world in which more people were engaged in service than in production jobs. We are still, I think, the only nation in which that is true. By 1980, we will have two people engaged in service for every one engaged in production.

There is pretty clearly a concept we used to laugh at, the concept of taking in each other's washing and charging for it, contributing to the gross national product. I don't pretend to understand it all, but it is pretty clear that we can have a self-sustaining, viable economy which is based on an increase in the amount of service we provide each other.

Mr. RANDALL. Mr. Secretary, if you will let me interject. One time in our congressional district we found there were no plants, no manufacturing plants, no railroads, hardly any buslines, hardly anything. It wasn't large, three or four or five hundred. I inquired, "What do you live off here?" In fact, there were no retired farmers there. "What do you live off of? How do you get by?" "We live off of each other." That was the case of each taking in each other's washing. They said, "We just live off each other."

That is probably the closest thing I have ever heard to your proposal here on this increase in services as distinguished from so-called "have to be making something, have to be manufacturing something."

Mr. WIRTZ. I realize that that carries me pretty far out. We are probably going to have to start thinking through what particular activities involve an excess of use of natural resources and what other particular activities permit the larger use of human resources. If that seems too vague, let me at the risk of being misunderstood and probably at the risk of error, suggest that I expect we are going to have to rely a great deal more in the future on mass transit than the automobile, and we are going to have to make that shift because the mass transit has a number of things to commend it. Among others, it does not use an excessive proportion of natural resources. I realize all the political limits involved here.

I hasten to add, if that shift is to be made, I think we have got to provide, to buy up, the job rights of those who lose their jobs in one industry to move to another.

Just to be specific, to tie it together, we have 7 or 8 million unemployed today. If we were to do 3 things, in my judgment: One, move to mass transit to the extent that the economics and the ecology of it warrant; two, reduce the student-teacher ratio in our schools from its present 27 students to 1 teacher down to 24 to 1 teacher; and three, provide ourselves the health facilities which would put us in first place in the world instead of about eighth or ninth, if we were to do those 3 things, I expect we would have a manpower shortage in this country instead of unemployment.

It takes some planning. It takes some changes. But we have so much that we want to do that any idea of accepting unemployment as a long-range prospect seems to me is wrong.

Mr. RANDALL. The gentleman's time has expired.

We do recognize the gentleman from Washington out of order for 4 or 5 minutes.

Mr. BONKER. Just to follow up on what Mr. Wirtz said, because this is the first time I have heard anyone with concrete proposals about the problems of unemployment. The problem I see with that, Mr. Secretary, and I know you realize and appreciate it as well, is that to involve people in education and health and to a large degree in mass transit requires a different layer of expertise than we have in the categories of unemployed now. If we were to meet those objectives it would involve a crash program of training and education.

Mr. WIRTZ. Which might be what it would take to revitalize this economy. I say that too flippantly, but it would be an element in the restimulation of the economy. It certainly would require that.

Mr. BONKER. Thank you.

Mr. RANDALL. Thank you.

The gentleman from Maryland.

Mr. GUDE. I certainly appreciated your comments about mass transit, Mr. Secretary. We just had a report which was released by the Library of Congress that said that the subway system for the Washington area should be shortened because it was shown that people were going to use more and more automobiles in the future and it just wasn't going to be needed. It was sort of a self-fulfilling prophesy type of report—to shorten the system because people don't want to use cars. We should, however, present them with an alternative.

I think your comments relate to previous remarks. I asked you the question about the attitude of the labor union, and as a corollary to this point, is management doing anything in this area to try to utilize our tremendous productive capacity in the 1 or 2 years' sabbatical leave for the young worker to retrain at age 25 or 30?

Mr. WIRTZ. In general, Mr. Gude, I find little of that. But there are emerging signs of a clear management-employer interest in this kind of thing. The most specific form, so far as I know from what I have referred to, does not apply to the older worker. I see very little of it there—in fact, almost none.

If you move on down the line, as our earlier conversation did, you come to this tuition-refund program, which is becoming an important thing in American industry. A lot of the larger employers now are holding out making very broad representations to their employees that they will pay the tuition of that individual who wants to take some training or retraining.

There is one other significant development. We find that in a great many collective bargaining agreements in this country today, there are being included increasingly broad provisions for re-education, retraining of the kind we are talking about.

My answer to your question would be that I see the signs of this interest emerging on the part of the employers, directed relatively so far to the older worker hardly at all, but increasing as far as the other elements in the work force are concerned.

Mr. GUDE. Is the idea of his concept as established as a pattern in the life of a worker that retraining starts in the younger years and it will continue as they go along through life? So instead of being counseled on how to get their social security payments at age 55 and 60, they will again go back into more training and be a useful productive worker on into their older years?

By converting some of this productive capacity into education in earlier years, you build a stronger economy to absorb the older worker?

Mr. WIRTZ. That is my understanding of it. If I may put the same thing in broader terms, this business of dividing all of life into three categories—youth for education, adulthood for work, and older age for the denial of the opportunity to enjoy either of them—is simply absurd. We are already realizing the ridiculous nature of it from the youth-to-adulthood transition. This business of everybody taking all of his or her education at one long uninterrupted sitting, never to come back to it, is now disappearing. We are breaking that up.

I think we look with a considerable degree of realism toward a different conception of the life pattern which does involve an interchange between education and work all the way on through.

Mr. GUDE. In your study of the western European communities and how their work force is being structured, have their efforts in this direction resulted in employment of older workers spreading the work force into the older ages, such as we are proposing might come about?

Mr. WIRTZ. The West German statute was in 1969 and the French statute was in 1971, so there is not yet much evidence. But I would be less than frank if I weren't to say to you that the most recent survey made of that experience by Dr. Striner out at the American University indicates that there have been disappointments in measure than there have been satisfactions.

The short answer is that it is still too recent to permit that evaluation.

Mr. GUDE. Thank you, Mr. Chairman.

Mr. RANDALL. Thank you, Mr. Gude.

Does the gentleman from Iowa wish some time to be recognized?

Mr. BLOVIN. No.

Mr. RANDALL. The Chair felt that there was curtailment of time of the gentleman from Washington so we will recognize the gentleman from Washington.

Mr. BONKER. Just one question, Mr. Chairman. Mr. Wirtz, in your book you speak of the need to provide for an adequate supply of data about possible job sources, and so forth. You estimate that it would cost between \$3 and \$5 million. But, as I understand it, you were referring to young people just entering the job market. Couldn't you apply that same system to helping senior citizens?

Mr. WIRTZ. Yes, sir. There is a vast underdeveloped opportunity to prepare at the local community level an infinitely clearer picture of work and training prospects than we presently have.

Mr. BONKER. Don't you think employment security offices throughout the country are working in this direction?

Mr. WIRTZ. They are perhaps working in this direction. There is simply not enough staff or money available. Let me say this: If you would care, sir, two of us have recently prepared a monograph on "The Critical Look at the Measuring of Work." I would be glad to supply a copy of that. We go into this further here.

Very quickly, my answer enlarged there would include two elements. First, if, at an expense of about \$15 million a year, the BLS and the Census Bureau monthly survey sample could be enlarged so that we could get local figures on the present situation. We don't have them now.

You can get on an annual basis now only the figures for, I think it is the 31 largest standard metropolitan statistical areas and 19 States. Really, with the CETA being administered without that local information, there is a serious question, in my judgment, of responsibility for that.

So, point number one, by a \$15 million larger appropriation for that monthly survey, we could get the data on the local areas.

Mr. BONKER. I don't want to nitpick, but I thought you said the system would cost between \$3 and \$5 million. Am I in error on that?

Mr. WIRTZ. I don't trace that particular figure.

May I add one other thing? I think that the local employers and the schools and the other local service organizations working together at the local community level can do what the Federal Government will never do on this, and that you could get in almost every community in this country a relatively firm 5-year, not projection, but anticipation of what the changes are going to be in that community.

Or in short, Congressman, I would think we better start moving our thinking toward doing this locally instead of on a Federal basis with perhaps some modest input of Federal funds.

Mr. BONKER. So we are talking not only of job opportunities, but of training as well?

Mr. WIRTZ. Yes. There ought to be a survey which would include both of these elements.

Mr. BONKER. If we are going to, as you say, anticipate job opportunities, then training is a necessary process which must occur before we place people.

Mr. WIRTZ. If I could offer one other specific illustration. The most recent one would involve what the private task force in New England did recently for the New England Regional Commission. They went into the whole New England area and, interestingly and relevantly here, because of the older workers' situation, came up with some extraordinary interesting conclusions which show, among other things, that there is a very high concentration of older workers in the New England area.

They then translated that by a relatively short-range projection into what jobs there were going to be in the next few years. It is the best illustration I know recently of what you can do at a local community level better than you can do at the Federal level.

Mr. RANDALL. Thank you, Mr. Bonker.

Going back to try to pick up a few loose ends, Mr. Wirtz, one of your comments when you made your presentation was these words, there are, of course, plenty of things in the United States for all of our older folks to do, not just volunteer work. It was about that time that you offered the illustration about the difficulty of statistics.

You said here we have two people who go to a hospital in the morning. One is outside and collects parking fees. The other goes inside and does some volunteer work. One is included in the GNP and one is not.

Then you went ahead to say "We should review the distinctions of what does constitute the labor market." You went on to talk of the productive capacity of older persons.

Would you tell us, is this in your mind or in your view or in your statement a question calling for an entire revamping of our statistical process?

Mr. WIRTZ. Yes, it is.

Mr. RANDALL. What are you proposing?

Mr. WIRTZ. We could, Mr. Chairman, quite relatively easily include on at least an annual basis, if not on a monthly basis, the measurement of what we presently call volunteer work. Right now we measure only the work which is performed in the labor market. We do not include anything that is done in the home or in the community on other than a paid basis. That measurement could, and should, in my judgment, be expanded to include these other kinds of activity and work.

Interestingly enough, Japan about 2 years ago made this change in its statistics and you now get reported in Japan on a monthly basis seasonally adjusted decimal point yen, I suppose it is. You get a report on the value of all of this kind of effort and activity.

There has been a suggestion proposed by Professor Tobin and one other at Yale about the change of the U.S. figures to put them on that basis. It would not be as precise as what we presently have, but it is easily done. Twice in the last 10 years the Census Bureau has included a small bank of questions in its monthly sample, for October I think it is.

Mr. RANDALL. Who did that?

Mr. WIRTZ. It is the Census Bureau making its monthly survey.

Mr. RANDALL. This last October?

Mr. WIRTZ. No, it was not last October. I have forgotten when it was. I think it was 1973 and earlier in 1963. By the inclusion of just a small number of questions on that one bank and that one monthly survey, they have given us quite an illumination of what people contribute outside the labor market.

I mention these various things only to suggest to you that I think it is relatively easy to get a picture of what we are doing constructively, productively, in service of one kind or another outside the labor market. I do think that would contribute greatly to our thinking about it and would illuminate the possibilities of expanding the economic growth concept we now have.

Mr. RANDALL. There is a point at the tailend there, Mr. Secretary. I suppose that one byproduct might be it would show these other factors in the gross national product that it might dispel some of the doom and gloom that goes around, that we are really not as bad as some of the figures have made us seem to be. But it would also, right at the end you said, reveal some opportunities.

Mr. WIRTZ. That is correct.

Mr. RANDALL. That is the salient point.

Mr. WIRTZ. I think the first element is important, Mr. Chairman. I don't mean to suggest, neither do you, that we solve our problems by redefining the gross national product in some way that it would go up.

Mr. RANDALL. Psychologically.

Mr. WIRTZ. That is right. On the other hand, if what we are talking about are things which are important to people, and indeed they are, then to start telling ourselves that we are doing some pretty grand things, even the same month that the gross national product went down, is a very important point.

Mr. RANDALL. It is.

Mr. Gude?

Mr. GUDE. Thank you, Mr. Chairman.

Mr. Wirtz, what would you think of the proposal to merge all of the several agencies that are involved in combatting discrimination, that is agencies that are concerned about sex discrimination and race discrimination and physical handicaps in one super-agency, which would include, of course, discrimination against age?

Mr. WIRTZ. I have to think a minute, Mr. Gude, because I am not familiar with this. Perhaps there has been such a proposal, which I just don't know about. May I inquire? It would be a proposal to group all of the employment discrimination in one?

Mr. GUDE. Yes.

Mr. WIRTZ. Which would include particularly youth, minority, women, older workers, handicapped, and disadvantaged. Group all of those together. My instinct is to shy away from it and to think that it becomes just a straight enforcement program.

I guess the plain answer is I don't know. I don't have a clear reaction on that.

Mr. GUDE. The reason I asked this question is because I guess this is the age of consolidation. So many people come up with ideas of how we can restructure governments and cut through all the red tape in one fell swoop. And this proposal had been put forth.

Mr. WIRTZ. May I just add this? I suppose that that would have been almost a necessary consequence. You would have had that if the President's proposed reorganization of the executive proposed several years ago had gone through. I think that would have brought all of those into the same pattern. I have always thought that that proposal was right.

My more thoughtful answer to your question would be that I guess if it is done just to bring the prohibition of discrimination together, I don't see it. But if it is done as part of a reorganization of the Federal executive which brings these various related programs together, that would be a helpful consequence.

Mr. GUDE. Thank you, Mr. Chairman.

I certainly want to thank Mr. Wirtz for taking his time. He certainly has been very helpful to me in an overview of this problem.

Mr. RANDALL. I am sure we all agree that this has been an unusual and most helpful and most interesting hearing. We have had some concepts advanced that we certainly haven't heard before in any of our hearings.

The gentleman from Washington.

Mr. BONKER. I have one question which strays from the subject of senior citizens, but I would like to tap one resource that is before us concerning labor statistics. Recently, there have been accounts in the newspaper about manipulation of labor statistics. Are there any real factors in compilation of reporting unemployment figures, or is this a pretty variable area that is difficult to project not only accurately, but truthfully?

Mr. WIRTZ. You mean projection or measurement of the present situation?

Mr. BONKER. Measurement.

Mr. WIRTZ. It does not relate to that subcommittee's subject, but I would like to send you personally, Congressman, this recent article that a couple of us have done bearing on this point. I have done this with Harold Goldstein who was for a long time the senior career servant in the Bureau of Labor Statistics, so it has an understanding which I would not have brought to it.

My answer to your question would be that this is an area which does permit almost complete illumination statistically, that the present figures fall short of that for a number of reasons, some of which we have referred to here. Those figures could be improved substantially, and most particularly could be brought in line with the public understanding of them, which is quite different, with relatively few changes.

If I may mention just two or three things, illustratively. The public, reading those figures, misses several points. First, they get each month an average figure, a single average. All they know is that unemployment last month was 7.8 percent. Not one out of a hundred of them knows that that average covers a range which goes all the way from three or four percent for male adult workers to 40 percent for minority group youth. I think it is unconscionable. No, that is the wrong word. It is most unfortunate that this one overall average is the only thing that gets to the country because it doesn't tell us what to do about the problem. That problem has to be met at a number of different points. That is not the BLS's fault. That is the result of the reporting.

I will mention one other thing and be done. Neither does the public understand or in any way appreciate the fact that the critical element in those monthly figures is the labor force participation rate. When the country hears that unemployment is up or down, they don't realize that the basic element in that is how many people asked for work last month. If the situation was so discouraging that the number asking for work goes down, that lowers your base and it seems to show an improvement in unemployment. That's absurd. So there are elements of that kind.

My short answer to your question—I should have made it shorter—is that I have great respect for the integrity of them. There is no question but that those things are put together just terribly, terribly carefully. There is no question about the integrity, the accuracy of them. There are real questions in my mind as whether today they cover all of those things in which the public is interested and ought to know about.

Mr. BONKER. I have talked to representatives of other governments and they have different ways of compiling information which brings their unemployment figure down.

Mr. WIRTZ. Yes. The big element on that is that a great many of them do not include anybody till he or she has become a member of the work force.

Mr. BONKER. They don't count housewives or students?

Mr. WIRTZ. No; they do not count students. And they do not count those looking for work for the first time. This is a pretty sloppy figure, but that has about a 2.0 adjustment element. That means about a 2.0 adjustment element.

When we see the comparisons of our figures with those for Scandinavia or most of Western Europe, they always show up much better. One of the reasons they do is because they don't count those who are not yet in the work force.

Mr. BONKER. Thank you.

Mr. RANDALL. Thank you, Mr. Bonker.

Mr. Secretary, would you be good enough to share with all of us, if there is no objection to it, either way you wish to do it, give it to us individually, the monograph you referred to?

Mr. WIRTZ. It is called "A Critical Look at the Measuring of Work." I would be glad to.

Mr. RANDALL. At the time we make the report we will certainly consider the conclusions of the summary, if you will make it available to us.

Mr. WIRTZ. Sure.¹

Mr. RANDALL. Mr. Secretary, in your testimony, you mentioned the West German and the French leave. I don't know whether you can call it a sabbatical leave. You said a 2-year leave, I believe, for reeducation or going back to school or for just retraining in contemplation of a possible loss of job. Would you tell us then have you observed that firsthand?

Mr. WIRTZ. No, I have not.

¹ A copy of the monograph was received and is retained in the committee's files.

Mr. RANDALL. It is those two countries?

Mr. WIRTZ. Yes. It may have been extended. The person who could be most helpful to you on that would be Professor Striner at the American University who did go over there 2 or 3 years ago. Herbert Striner. He did write a book on it and he has gone over there again recently. I think he knows more about it than anybody else immediately available here. There is also a considerable volume of study of it by the OECD. What is that?

Mr. RANDALL. The Office of Economic Development or something. It is sort of a loose confederation.

Mr. WIRTZ. That is right. But those would be the two best sources.

Mr. RANDALL. I will ask the staff to try to get in touch with Professor Striner.

Mr. Wirtz, while this is a select committee, so many times we have requests to try to see if somehow we can do a little travel outside the continental United States. It occurs to me that this might be one place for some productive effort in these two countries.

Mr. WIRTZ. Right. There are some interesting things.

Mr. RANDALL. I was interested in your comments when you said that we need some type of "phased retirement." Then you went ahead and used the words "Not instant uselessness," which you said created trauma and so forth. How do you propose to accomplish this?

Mr. WIRTZ. There are, first, some very interesting studies. Let me say the reason for that phrase, Mr. Chairman—trauma—is that there are some very interesting studies now which show the psychological impact on the individual of this sudden cutoff.

As far as the program is concerned, I suppose it could be illustrative, for the point of our discussion of it, by contemplating perhaps by private arrangement a program which would mean that at age 60 or 62, but without that becoming a fixed arbitrary period, that at a certain point an individual would cut back, let's say, 10 hours in his or her work and then perhaps 2 or 3 years later move down another 5 or 10 hours.

Mr. RANDALL. Ten hours a week?

Mr. WIRTZ. A week. I beg your pardon. This would not be just to take it easy. This would have possibly been to tie in with preparation for some other kind of activity.

My point would be that you could have possibly worked out a rational phasing out system. Perhaps it ought to be in terms of months instead of days of the week so that there would be a longer vacation period starting at age 60 so that again you could start preparing yourself to do something else.

Then it might go beyond 65 or whatever period we want. In its more constructive form I would think that it should be emphasized that that would not be just working less but on a kind of flexi-time basis readjusting your work schedule so as to start moving into some other constructive activity.

Mr. RANDALL. The reference which you made, I think, was to these words "It is hard to understand why we must spend \$40 billion on unemployment insurance." You said you believed that \$40 billion is too low, that there could be a much more effective use of this kind of money to create vigor in the economy and certainly more comfort than simply what the recipients received from the unemployment compensation.

At that point, you didn't carry on the thought. Then you proceed with your summary. Would you tell us about this?

Mr. WIRTZ. Yes. In short, Mr. Chairman, there has been a long continuing argument about whether unemployment insurance and these other programs should be conditioned upon taking training and that kind of thing. I think we have reached the point where the answer to that question is simply, yes. Or putting it still differently, that we——

Mr. RANDALL. You mean while the recipient is receiving it that they must go ahead with their training?

Mr. WIRTZ. Yes; unless there are special circumstances of one kind or another.

Strangely enough, until the last year or two, there have been quirks in this law of ours which have resulted in almost the discouragement of any kind of education. Indeed, there was a time there when in some States if you started taking a training program while you were on unemployment insurance you lost your unemployment benefits.

Mr. RANDALL. There should be clearly an amendment. That is the point I am trying to nail down here.

Mr. WIRTZ. Yes. I haven't looked at that recently enough to know whether we need an amendment to eliminate that point. We may have gotten that far. But I am suggesting that we are at the point where we should include affirmative training requirements, among others, as a condition of unemployment where that unemployment is part of anything more than just a temporary interruption of the work. That used to be the nature of unemployment. It isn't now. More and more of it is going to have no end. It is terminal unemployment.

Mr. RANDALL. Mr. Secretary, we don't want to keep you too long. We have some other questions, in fact, many of them. I find some having been covered that the staff has prepared.

In some of the other hearings on this same subject, we are seeking to try to develop a report that will have some value. We run across the suggestion that there be, just as there is in sex discrimination, some sort of affirmative action. Those two words raise a red flag for some people. Maybe it wouldn't but it has been proposed. An affirmative action program for the workers has been proposed.

In your judgment, would that, on the one hand, create excessive problems on the basis of employers certainly—labor organizations—this seniority arrangement and so forth? What do you think about that? We have had the pros and cons on it. You know what we are talking about.

Mr. WIRTZ. I sure do. And I know the concerns that you express and the basis for those concerns.

My answer would be unqualifiedly that there should be an affirmative action program in this area, but that there is every reason here to stay far away from that ratio element that developed in connection with the race discrimination. You can't do it here. You can't possibly equate out that way. When I say affirmative action here, I do not mean racial rule.

Mr. RANDALL. R-a-t-i-o?

Mr. WIRTZ. I was using both words "ratio" and "racial."

There should not be the ratio rule that developed in connection with the racial issue.

Mr. RANDALL. In other words, like the very sorrowful spectacle of where it was 4 years ago at the convention if you were of a certain political party you had to have one-quarter or one-half of a particular delegate to be sure there was an affirmative action program.

Mr. WIRTZ. That is the point I am making. There should be an affirmative action program, but stay away from the ratio danger.

Mr. RANDALL. Does the staff have some questions?

Mr. MURRAY. Yes, sir. One particular question. You mentioned slightly the problem of the shifting labor force population. We retire more older people earlier and we have less younger people coming into the labor force. This is beginning to place a strain particularly on Social Security. In addition, Mr. Peter Drucker has written an article recently on the crisis coming in private and public pensions. He has some different types of strategies for approaching this.

Do you have any particular views on this, on how this phenomena will affect the retirement of older people.

Mr. WIRTZ. If we are talking about the same thing—and I think we are—or thinking about the same thing, it is another reason for shifting our emphasis from security as such to opportunity. I don't know how much to credit all that I am beginning to hear about the weakening base of the Social Security system. I have no reason to feel great alarm about that at this point. But I do know that I think we are on much more stable ground for the future if we are talking in terms of trying to find those elements of productivity or contribution, or whatever it may be, on the part of older people, which would result in some of their security coming from what they earn for these other things. To that extent, it does seem to me the two are related.

Just to summarize my answer, it is that by emphasizing the employment opportunities for older workers, we lessen whatever strain there is on the Social Security concept as such.

Mr. RANDALL. If the staff will forgive me, and if we may sort of be certain we are talking about the same thing here, the Secretary is saying there is something again to the arguments that went around on the recent veto of the jobs bill, it is trading off dollars. That part of the argument was that here \$6 billion would reduce X number of billion unemployment compensation.

What you are saying here is that while you think that Social Security perhaps is on more stable ground than we think, we should provide for older persons the opportunities to continue to work and not fail because of age to contribute back into Social Security.

Mr. WIRTZ. Yes. I am sure it is in general the same point. I am not quite clear about all of the details. I don't know whether they should continue to contribute to Social Security after 65.

Let me just say I certainly support fully what you said. I am not dead sure about some of the details because my understanding is rusty now.

Mr. MURRAY. There is the new pension reform law which for the most part is just going into effect. There has been talk of some companies terminating or even not starting their retirement system before the law went into effect. I don't know if you are familiar with these kinds of problems or not. I am curious if you have some comments on the pension reform laws?

Mr. WIRTZ. I am not familiar with the transitional problems. That has been one of the ironies of my last 15 years, that that law which was adopted recently was the one that came out of a unanimous Cabinet recommendation in 1963. The original relevance in saying that is that I support unqualifiedly the principle of that law, the form of it. So far as I know—and I just don't know, Mr. Murray, about transitional problems—it meant revising some private plans and they doggone well needed revising.

Mr. RANDALL. Thank you very much.

Thank you, Mr. Secretary.

Are there further questions?

Mr. WIRTZ. May I say, Mr. Chairman, just how much I appreciate the interest here of this committee and how much I admire what the committee and the staff is doing.

One final thing: I have had the feeling, as I have talked increasingly the last hour and a half, that when I had responsibility, I didn't know the answers and now I seem to know the answers because I don't have the responsibility.

Mr. RANDALL. We are most grateful for your appearance. Believe me, we know you are a busy man. You have been helpful to us by your contribution.

Mr. WIRTZ. Thank you.

[Whereupon, at 11:44 a.m., Wednesday, February 25, 1976, the committee adjourned, to reconvene at the call of the Chair.]





